COLLECTIVE AGREEMENTS

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COLLECTIVE AGREEMENTS

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CONTENTS

PART II

THE LEGISLATION CONCERNING COLLECTIVE AGREEMENTS

A. — Methods of Drawing up Collective Agreements :

B. — The Legal Effects of Collective Agreements :

PART IV

COLLECTIVE AGREEMENTS AND INTERNATIONAL LABOUR CONVENTIONS

GENERAL INTRODUCTION

The subject of collective agreements is no new one for the Organisation, which has had to deal with it on several occasions. At the First Session of the International Labour Conference, in 1919, the question arose in connection with the application of the Hours of Work (Industry) Convention. Articles 2 *(b)* and 5 of that Convention provide for certain arrangements for the application of the Convention being made by collective agreement. This precedent was followed in a number of subsequent Conventions.

In 1927, at its Tenth Session, the International Labour Conference adopted a resolution, submitted by the Italian Government delegate, requesting the Governing Body to consider the desirability of placing on the agenda of an early Session of the Conference the question of the " general principles of contracts of employment ". This expression included both collective agreements and individual contracts of employment.

The problem came up again in 1928, but this time it was restricted to one branch of the economic system. The Conference, at its Eleventh Session, instructed the Office to supplement its information concerning collective agreements in agriculture with a view to the discussion of the question at an early Session of the Conference. The Office prepared a report, which was submitted to the Conference at its Seventeenth Session.[1] The special Committee appointed by the Conference to study this report proposed that the Governing Body be invited to consider the possibility of putting this question on the agenda of a future Session of the

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Collective Agreements in Agriculture.* Studies and Reports, Series K (Agriculture), No. 11. Geneva, 1933.

Conference.[1] The Governing Body subsequently referred the matter to its Committee on Agricultural Work.

At a meeting held on 29 September 1934, the Committee on Agricultural Work decided to urge the Governing Body — if it decided to submit the question of collective agreements in general to the 1936 Session or some later Session of the Conference — to include agriculture in the scope of the question, since the Office had already prepared a report on the subject and that report had been discussed by a Committee of the Conference in 1933.

The question was again brought before the Conference at its Nineteenth Session, and it remains before the Organisation in a peculiarly urgent form. It will be remembered that the Conference adopted a Draft Convention concerning the reduction of hours of work to forty a week and also a Resolution concerning the maintenance of the workers' standard of living.

According to Article 1 of the Forty-Hour Convention, each Member of the International Labour Organisation which ratifies the said Convention declares its approval of:

(a) The principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence ; and

(b) The taking or facilitating of such measures as may be judged appropriate to secure this end. . . .

The Resolution concerning the maintenance of the workers' standard of living is as follows :

The Conference,

Having adopted a Draft Convention declaring its approval of the principle of the forty-hour week,

Considering that the application of this principle should not as a consequence reduce the weekly, monthly or yearly income of the workers,

[1] The following passage from the report of the Committee to the Conference should be noted :

" The Committee noted the general accuracy of the description of the facts concerning collective agreements in agriculture given in the report. At the same time, attention was drawn to the fact that the ' Conclusions ' of the report took account almost exclusively of the importance of those collective agreements which result from a free bargaining between organisations of employers and workers or of agreements or guiding principles serving as a basis for individual contracts drawn up under the auspices or with the assistance of public authorities, but that they did not sufficiently note other forms of collective regulation where State action or State initiative played a large part and which in certain circumstances can be considered at least as efficacious. "

In view of these comments, the present report deals not only with collective agreements in the strict sense, but also with the other forms of collective regulation to which the Committee drew the attention of the Conference.

whichever may be the customary method of reckoning, nor lower their standard of living,

Invites Governments :

(1) To take appropriate measures in order to ensure that any adjustment of wages and salaries should be effected as far as possible by means of direct negotiations between employers' and workers' organisations concerned , and

(2) After consultation with the organisations of employers and workers concerned, to take or facilitate appropriate measures to enable either of the parties concerned, if agreement between them cannot be reached, to submit the dispute to bodies competent to deal with wage questions, such bodies being set up, where they do not exist, for the purpose ; and

(3) To furnish to the International Labour Office periodic reports upon the measures they have taken for the introduction of the forty-hour week and for the maintenance of the standard of living of the workers.

These texts show that the procedure recommended to States for giving effect to the principle of maintaining the workers' standard of living is based, in the main, on collective agreements or some similar method of regulation. This fact lends greatly increased importance to a comprehensive and detailed study of the problem of collective agreements.

Therefore, at its Sixty-ninth Session, in January 1935, the Governing Body of the International Labour Office decided to submit to the International Labour Conference a report on collective agreements. According to this decision the report to be prepared by the Office was intended not to provide the necessary background of information for the drafting of a Convention or Recommendation in the traditional manner, but rather to give a general survey of the main aspects of the problem on which the discussion might concentrate.

With this end in view, the report has been divided into four parts.

The first deals with the practical problem. The part played by collective agreements or similar regulations in different countries and in various industries is analysed.

The second part is devoted to the legal aspect of the problem : the various methods of regulating conditions of employment collectively and the effects of such regulation.

In the third part the social and economic problem is analysed and the place of collective agreements in the economic system is examined.

The fourth part deals with the possibilities that collective agreements offer, in conjunction with national labour legislation, of facilitating the ratification and application of International Labour Conventions.

The conclusions of the report suggest certain problems specially suitable for discussion, and possibly for action at some future date, by the International Labour Organisation.[1]

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[1] The International Labour Office is indebted to Mr. J. H. Richardson, Professor of Industrial Relations at Leeds University, for valuable collaboration in the preparation of the present Report.

PART I

COLLECTIVE AGREEMENTS IN PRACTICE

Introduction

In many countries conditions of employment, which for long were governed by individual contracts of service, are now fixed on a collective basis — most frequently by collective agreements. The collective agreement originated and developed in Great Britain during the nineteenth century, spreading to the Continent of Europe and to some countries in other Continents towards the end of that century and the beginning of the present one. The movement gained greatly in strength and in depth immediately after the war. Since then, while it has continued to progress in some countries, it has done so much more slowly in others, mainly as a consequence of the economic depression ; in the last year or two, however, it would seem to be advancing with renewed vigour, especially in the United States of America, and more recently in France, Luxemburg and Belgium.

In some countries the extension of the movement has been helped by the spread of State intervention in social affairs, by the development of trade unionism and of social organisation. Moreover, State intervention has led to the adoption of certain methods of fixing working conditions that also substitute collective regulation for the individual contract and supplement, or even take the place of, collective agreements. One example is the fixing of minimum wages — a method that is primarily employed in occupations where the collective agreement is still unknown but that is also sometimes more generally applied. Again, conci-

liation and arbitration have certainly facilitated the conclusion of agreements for certain occupations, but at the same time arbitration awards, especially where arbitration has been made compulsory, have largely taken the place of voluntary agreements. Mention may also be made of the rulings of labour courts, the decisions of mixed committees and the institution of collective labour rules by the State. There are thus numerous collective methods in existence, and even in countries in which their application is comparatively restricted the problem is being widely discussed. The first point to be considered therefore is : what is the real extent and importance of the collective regulation of conditions of employment at the present time ?

It would be rather difficult to reply to this question by means of figures, for there are comparatively few countries that publish statistics of collective agreements, and the available statistics are not easily comparable ; the statistics on other collective methods are not much more numerous or more detailed.[1] A general survey of the quantitative importance of collective agreements and similar measures is thus practically impossible, but it is perhaps easier to assess their qualitative importance. It has therefore been thought more useful to examine the texts of the existing collective agreements, arbitration awards, etc., with a view to deducing therefrom their real practical significance in determining conditions of employment.

But even this method is subject to certain limitations : it is impossible, at any given moment, to state exactly what are the conditions of work obtaining in the various industries and occupations of a great number of countries, and it is equally impossible to grasp the dynamic aspect of the movement by demonstrating the progress made in these collective agreements and regulations within a given period. The more modest aim of the present survey will be to discover the various subjects dealt with by the system of collective regulation of working conditions and the various forms of the system.

Even within these limits it is impossible to claim that the survey will be complete ; it will be merely a general analysis, illustrated by numerous examples taken from collective agreements, arbitration awards and similar decisions, wherever these texts seem in some respect particularly typical of the methods adopted.

[1] Cf. Appendix II : Statistics of Collective Agreements.

Some indications will first of all be given as to the external structure of collective agreements and similar decisions ; the main problems constituting the substance of the agreements will then be examined ; in conclusion, the attempt will be made to deduce from that study what practical functions can be considered as peculiar to the various collective methods of regulating working conditions. In this way, the practical value of these collective methods will be made clear.

CHAPTER I

STRUCTURE OF COLLECTIVE AGREEMENTS

Before proceeding to consider the material substance of collective agreements and other similar texts, it will be well to make a few brief comments on their scope, their validity in time and certain of the more typical forms of regulation. It is true that the agreements themselves make mention of the parties, the scope of the agreement, etc., but these points do not form part of the substance of the agreement ; they are conditions attached to it. In many cases, too, these matters are settled by legislation. The following pages contain merely a few general remarks, intended to facilitate the study of the substance of the agreements.

Scope and Validity in Time

In the case of actual agreements, the scope is often identical with the contracting parties. It is sufficient to note that a collective agreement may bind a single employer, a group of employers or one or more employers' associations and, generally speaking, one or more trade unions of workers. In the case of other methods of regulation, there is of course no question of contracting parties.

The scope of the regulations is defined with reference to the occupations, the persons and the area covered. Very often the undertakings to which the scheme applies are enumerated in the text or in a schedule. The trade to be covered within the undertakings is either made clear by the nature of the contracting trade union or is specified in the text.

In voluntary agreements the scope as regards persons is also often identical with the contracting parties ; it may be determined positively by an enumeration of the categories of persons concerned, or negatively by the exclusion of certain groups. In current practice, wage rates are the normal basis for defining the groups of persons

covered by the agreements. Exemptions may be general or may be governed by special provisions. Casual workers and domestic servants are often among the general exceptions. Sometimes apprentices are also excluded, but they may, as will be seen later, be covered by the agreements and even be subject to certain special rules.

The territorial scope is regularly specified ; it may be local, regional, provincial or national. But the substance of the regulations does not permit of general conclusions being drawn as to the practical importance of each of these types.[1]

The duration of the validity of the agreement depends on the date of coming into force and the date of expiry. In so far as the matter is not settled by legislation, the agreements or other texts usually — in some countries compulsorily contain provisions on this subject. The date of the agreement or decision is practically always given, but that date does not necessarily coincide with the coming into force of the regulations, which may be, and sometimes is, fixed for a later or for an earlier date.

The text generally fixes the date of coming into force, but the date at which its validity expires is not always stated. In the case of collective agreements, a distinction must be made between those for an indefinite and those for a definite period. In the case of other methods, the question is a legislative one ; the regulations very often remain in force until they are repealed.

If a collective agreement is for an indefinite period, the parties can terminate it at will, generally subject to a certain period of notice, which varies from a few weeks to a few months. In some cases notice of termination of the agreement can take effect only at certain fixed dates ; in other cases notice cannot be given until the agreement has been in force for a certain minimum period.

Many agreements are drawn up for a specified number of months or years ; the more general the agreement, the longer the period usually is. Basic agreements and those laying down general principles are normally concluded by large organisations or federations for a long period, whereas wage agreements, for example, are often of much shorter duration. But no general rule can be enunciated on this point.

Often even a short-period agreement automatically remains in force indefinitely or for a fixed period (e.g. one year) unless

[1] But cf. below, p. 206 : " Standardisation of Working Conditions ".

notice of withdrawal from the agreement is given a certain time before the original date of expiry.

Notice of termination must be given in the prescribed manner (in writing, by registered letter, etc.). Sometimes the notice of termination or even the intention to terminate the agreement must be communicated to a joint board responsible for instituting fresh negotiations between the parties.

Standard Forms of Agreement

Originally, the collective agreement was drawn up at the conclusion of a dispute to regulate some of the questions at issue : wages, hours of work, etc. ; in course of time, however, it has become more stabilised and of more general application. These tendencies are reflected in the various typical forms of agreement, and also to some extent in the other methods of regulation.

Although *ad hoc* agreements of limited scope are still to be met with, collective agreements tend more and more to lose their connection with any open dispute and simply to regulate in general all the conditions of employment in some occupation and govern the collective relationships between the parties. The forms vary ; very often a single agreement deals with all the questions affecting a given occupation at any one time. But, as the agreement must always be adapted to the march of economic and social development, it needs many changes and additions. There are thus often quite a number of agreements in force for one and the same occupation. Again, certain questions are sometimes purposely left to be dealt with by special agreements, either because they concern only a small group of persons (e.g. apprentices) or because they are of limited scope (e.g. holidays with pay). But there are sometimes disadvantages in such a system. On the one hand, the multiplicity of texts and the risk of contradictory provisions it entails may create uncertainty as to the validity of the various clauses ; on the other hand, the whole collective system may be called in question whenever the whole agreement has to be revised merely in order to alter one single point. Consequently, as this method of regulating working conditions developed, the need for certain differentiations made itself felt.

One method of differentiation is to separate wages, which are subject to frequent variations, from other conditions and deal with them in special agreements. There will then be general agreements and wage agreements side by side. Some countries

have endeavoured to systematise agreements by grading them, sometimes even by legislation. If local agreements are made subordinate to regional ones, and they in turn to national ones, the various questions to be settled can be dealt with by different agreements according to their scope and stability. This method may produce the same result as the first one, wages being dealt with in regional or local agreements, while the general, basic agreements are national or provincial in scope.

A similar result can be achieved by developing the provisions governing the collective relationships between the parties. On the one hand, these relationships are usually regulated by general agreements of long duration which serve as a basis for other special agreements. On the other, the agreements provide for the creation of joint committees for a variety of purposes; they thereby facilitate the adoption of minor amendments, the settlement of partial disputes, etc, without the necessity for reopening the whole question of the existence of the agreements. Again, the agreements may simply regulate collective relationships and lay down certain principles to be included in future individual agreements, or they may set up a system of joint bodies to settle the conditions of work for various branches of industry, groups of workers and districts.

In the following survey, the connection between these various standard forms and the actual regulation of different questions will be brought out.

CHAPTER II

WAGES

The regulation of wages necessitates two sets of clauses : those dealing with the fixing of wages and those concerning payment. The fixing of wages may be considered as being peculiarly within the province of collective agreements ; the payment of wages may be, and in most countries is, dealt with also by legislation.

Wage-fixing

The two forms of remuneration for services are wages in cash and in kind. Wages in cash are the more important and will therefore be discussed first. Some of the problems connected with wages in kind will be studied separately later.

Cash wages may be fixed in proportion to the time spent by the worker at the employer's disposal or to the amount of the worker's output, or the two factors may be combined. The way in which collective agreements have dealt with these different cases will be examined in the light of a few typical examples. The question of the actual amount of the wages is naturally outside the scope of this study.

Time Rates

It is impossible in the present report to consider in what industries and for what groups of workers time rates are the normal form of remuneration. It must suffice to state that it is the form applied to the great majority of workers, and that in many countries collective agreements are most widespread in industries where time rates are the rule, because they can more easily be uniformly regulated.

Groups of Workers

The purpose of the collective agreement is to guarantee the same wage to workers doing the same work, but that does not

mean that they prescribe uniform wages for all. It is in the interests of the employers as well as of the workers to make certain distinctions, and these are all the more necessary the wider the scope of the agreement as regards area, occupations or persons.

Territorial distinctions. — Collective agreements usually take account of the fact that the cost of living varies according as the worker lives in a rural or an urban area, in a small or in a large town. It may therefore be provided that the wage should be increased by a certain percentage when the worker is employed in a town of over a certain population (e.g. the agreement for horticulture in Silesia, Germany, 1935). Different rates may be laid down for the various industrial areas to which the agreement applies (Czechoslovakia, glassworks). As the system of agreements develops, the main localities come to be graded into categories *(Ortsklassen)* ; wage rates then vary according to the category in which the place of employment is located.

The grading of localities is apt to give rise to discussion or even to disputes, so that the drafting or the revision of the list is often entrusted to special bodies or to joint committees (e.g. for the building industry in England, the Netherlands and Scotland), the procedure of which is regulated in detail so as to ensure that all the relevant factors are taken into account. In Sweden, the grading established by the social administrative authorities is generally adopted in drawing up collective agreements.

Distinctions by undertakings. — As a rule all undertakings covered by the agreement are subject to its provisions without distinction. But an exception may sometimes be made for the benefit of certain employers if the strict observance of the collective provisions would be likely to cause them economic or financial difficulties. Such clauses are rare. It is more usual to find texts applying to a whole industry or branch of industry and grading the undertakings according to the nature of their work, the number of workers, and sometimes even the success of the undertaking, etc., the wage-rates varying for each grade.

Distinctions by groups of persons. — The main distinction is based on the occupational qualifications of the worker. There is first of all that between workers and salaried employees. In many countries these two groups fall under separate collective agreements because they belong to different trade unions, but

in some cases a single agreement may apply to both (Great Britain, co-operative agreement).

Amongst manual workers there is a fundamental difference between skilled and unskilled. The first collective agreements were concluded by skilled workers, and the system then spread gradually to all other categories. The agreements make allowances for the existence of these different groups by prescribing different wage rates for them. Distinctions are made, for instance, between skilled, semi-skilled and unskilled workers, labourers and apprentices. Some agreements discriminate between experienced workers and those, whether adult or younger, who are still being trained. In order to prevent disputes, or provide for their settlement if they arise, many agreements appoint joint boards to grade the workers or salaried employees concerned.

In some industries the collective agreements make distinctions according to the duties or jobs performed by the workers. This distinction may amount to the same as the preceding one, as is the case in mines, where only skilled workers are employed on extraction work. The two systems may be combined, as when a distinction is made between craftsmen, workers engaged in production, assistants, etc. In industries embracing many different trades, very extensive grading may be met with.

Agreements covering salaried employees often have a wide range of occupational groups *(Berufsklassen)*, such as senior and junior managing staff, or sales staff, office staff, technical workers, etc., according to the branch in question. Lists showing the various grades and the corresponding rates of salary are often annexed to or incorporated in the agreements

The transference of the worker into another category, his advancement, or similar measures, effected without his consent and entailing a reduction of wages, are often expressly prohibited, except where it is a question of preventing unemployment (e.g. France, agreements concluded during the summer of 1936).

Other distinctions may be of a personal nature : many agreements have different rates of pay for the two sexes ; others again fix the same rates but stipulate that output must be the sole basis for the payment of remuneration. In agriculture, wages are often fixed for men, excluding women and children.

As a rule, the rates vary according to the worker's age. A certain age is considered as the standard for the payment of a normal wage ; lower rates are paid to younger workers. The standard age depends on the nature of the work : it is often 18 years

for an unskilled worker, whereas for a skilled worker it may be 21 years, or even more if several years of experience are required before the worker reaches complete efficiency.

Special lower rates of pay may be arranged for workers over a certain age or of reduced working capacity, as well as for disabled or infirm persons. Such cases may be settled equitably by representatives of the two parties. Sometimes the ruling of a joint committee is required, or the fixing of wage rates may even be left to direct negotiations between the persons concerned.

Length of service is another factor that may affect wages. In reckoning length of service, account must be taken either of the time worked in the undertaking or of the number of years spent in a given occupation. Agreements often contain detailed provisions on this subject, prescribing how the calculation should be made and what interruptions or periods of work in the occupation should be taken into consideration (sickness, holidays with pay, military service, etc.). When a worker, and more especially a salaried employee, is bound by close ties to the undertaking and may be considered as in stable employment, rules may be laid down in the agreement for regular promotion or increments. Joint committees are sometimes set up to be consulted regarding the application of these rules or to intervene in the event of a dispute.

The worker's civil status may also be taken into account, higher rates being paid to a married worker with a family or to a woman worker with family responsibilities than to an unmarried person.

Regulation of Wages

The value of the provisions of collective agreements fixing wages differs according as the rates fixed are *minimum* or *standard* rates. In the former case, any wage lower than that stipulated in the text is contrary to the agreement, unless provision is made for exceptions. In the second case, the wage actually paid may be below or above the standard rate (e.g. building industry, Friesland, Netherlands). As a rule, the exact meaning of the wording of the agreement is a matter for interpretation. When a minimum wage is fixed, the payment of a higher wage is usually permitted unless expressly prohibited. With a standard rate it is exceptional for the actual wages to exceed or fall below this figure (Great Britain), but the rate fixed in the collective agreement may merely be an average intended for guidance and not be strictly binding. On the other hand, many collective agreements explicitly state that

the rates they mention are fixed or minimum rates. A system of combined minimum and standard rates is possible (Scotland, coach-building agreement of 1934).

Wages are usually fixed by the hour, day, week or month. Longer units of time are rarely met with in collective agreements, except in agriculture (in Sweden, for example). When work is performed in shifts, the unit of measurement may be the shift (in mines). Payment by the month is practically restricted to salaried employees, although it sometimes occurs in agriculture.

Components of wages. — A distinction must be made between fixed wages and allowances. The methods of determining the *fixed wage* vary. Often separate rates are laid down for various groups of workers, but it is equally common for one standard rate to be fixed, with percentages to be added or deducted for certain groups. Thus the wage of a skilled male worker over the age of 20 is often considered as the standard (100 per cent.), lower percentages being prescribed for younger or less skilled workers. On the other hand, the Australian agreements and arbitration awards take the official basic wage as the standard and prescribe higher rates for various categories of workers.

The *allowance* is added to the fixed wage. It may take the form of a supplement proportionate to wages, in which case, if it is regularly paid, it may for all practical purposes be considered along with the fixed wage. The second possibility, which alone will be dealt with here, is that the allowance is given at the employer's discretion.

There are several circumstances in which allowances may be paid. Reasons of service are the commonest. Sometimes the allowance represents compensation for loss arising out of the worker's employment — wear and tear of clothing, provision of tools, etc. A special allowance may be paid for some actual task, such as an unhealthy or extremely unpleasant job, work involving travelling expenses, residence away from home, etc. In this last case the worker usually receives a certain increase in wages as well as the actual compensation.

A worker or salaried employee who is responsible for supervisory work or work of special responsibility, such as the foreman of a gang, the head of a group or the manager of a branch, normally receives a special allowance.

In certain occupations it is customary to pay allowances for housing, food, light and heating. These allowances take the

place of former payments in kind, or they may be a form of compensation to certain groups of workers who do not receive the wages in kind still paid to others.

Bonuses may be provided, by way of encouragement or recompense, for workers who are particularly skilled or who reach a certain output, effect certain savings, etc. Other agreements prohibit the payment of bonuses, so as to prevent the worker from being exploited. When bonuses are given as a stimulus, the question of output enters into the fixing of wages ; the method is therefore a mixed one and as such will be dealt with later.

There is also the Christmas box or similar gratuity given at New Year, when the annual balance is struck or at some such time. Provision for this is more commonly made in salaried employees' than in workers' agreements, but examples may also be found in the latter (e.g. the agreements entered into by certain municipalities in Czechoslovakia). The amount of this payment may be a full week's wage or a " thirteenth month's " salary or a fraction (e.g. one-half) of the weekly wage or a given fraction of the average annual earnings. It may be payable to every person in the employment of the undertaking at the date in question, or only to those with a certain length of service (say, six months or a year). The amount may vary with the length of service.

Family allowances are based on social considerations. It was mentioned above that collective agreements may prescribe different rates of pay for married and unmarried workers. This difference becomes still more marked when a special allowance is guaranteed to the fathers of families.

If the collective agreement makes provision for family allowances, the possible beneficiaries are carefully defined. In some agreements all married persons are entitled to the allowance, and male or female workers who are widowed or divorced and have children to support are assimilated to them. There have even been cases in which persons cohabiting but legally debarred from marrying can claim an allowance (agreement of 1929 in the *Alpine Montangesellschaft*, Austria). Often no allowance is payable unless there are, say, two or more children in the family, the sum varying according to the number (e.g. in some Italian agreements). Very often the principle is : one household, one allowance, so that even if several members of a household are working in an undertaking only one of them can receive a family allowance. It may further

be stipulated that a worker loses his claim to an allowance if his wife is engaged in some other occupation or runs a shop, or if he makes any false declaration.

The agreements may set up mutual aid funds for the payment of these allowances (Italian agreements of 1934 for the reduction of hours of work).

In some countries the question is regulated by legislation which recognises or prescribes the establishment of equalisation funds organised and entirely maintained by the employers (Australia, Belgium and France).

Remuneration based on Output

The regulation of remuneration based on output by means of collective agreements is a question that would repay careful analysis, but for the reasons already given it must suffice here to consider only the most typical cases dealt with by such agreements.

Restrictions imposed by collective agreements. — The system of piece rates, as is well known, is often condemned by the trade unions, and some collective agreements prohibit its use. Piece rates are strictly forbidden, for instance, in the building trade agreements in England and Scotland. Sometimes the prohibition applies only to some forms of payment by results, such as the Bedeaux system, which is banned by the Italian agreement of 26 February 1935 for the Fiat works in Turin. Many agreements provide that certain groups of persons, such as workers below a certain age, may not be employed on piece or task rates.

Other agreements permit piece rates subject to certain conditions. Payment by output may, for example, be allowed for certain operations and prohibited for others that might involve undue physical strain upon the workers. Another method is to permit piece rates only with the consent of the parties concerned. Under the German national agreement of 1929 for the building industry, piece work had been made the subject of special regulations. It was provided that the local or district organisations should not agree to payment by output except when it was customary (i.e. the method in force for more than 50 per cent. of the workers concerned) in their area. In the event of any disagreement, the arbitration body mentioned in the covering agreement would decide. A similar provision exists in the agreement for the furnishing trades in Birmingham.

Under some agreements a joint committee is responsible for deciding whether piece work should be introduced; under others, the employer may be authorised to use this method if he guarantees certain minimum conditions to the worker, such as a fixed hourly wage, certain allowances, etc. (British heavy metal industry).

In many industries piece rates are widely used. Hewers in mines, the great majority of textile workers, quite a large proportion of metal workers and many others are paid by output. Sometimes time rates and piece rates exist side by side, but certain collective agreements impose restrictions in this direction so as to avoid the possibility of a section of the workers being exploited (clothing industry in Quebec Province, Canada).

The following passage is taken from the agreement drawn up in the U.S.S.R. for the first State motor-car factory (" Staline ") :

> 31. The main form of remuneration for labour shall be direct, individual task rates, subject to no limitation.
>
> Remuneration shall be fixed in such a way that the increase in wages is directly linked up with the worker's output on the tasks assigned to him ; it should act as a material stimulus for the workers to become more skilled. . . .

The fixing of piece rates. — When collective agreements recognise piece rates they generally try to give the worker certain guarantees. What is of importance here is therefore not so much the details of the systems in force but rather the general functions of agreements in this sphere. It should be noted that, in contrast to the fixing of time rates, collective agreements concerning piece rates do not specify the actual amount to be paid to the worker, for this naturally varies with his output. But they mention certain factors that should be taken into account in calculating his actual earnings, or else they aim at eliminating factors that would prove detrimental to the worker.

The question of the unit of output for the purpose of wages (number of articles, volume, weight, etc.) must depend on the nature of the work. But, in order to enable the worker to follow the calculations, some agreements stipulate that the rates should be expressed in terms of money and not, say, in Bedeaux units (Turin agreement of 1935 cited above).

The main point dealt with by the agreements is that of the rates to be taken as a basis for individual earnings. These rates may be fixed directly, or the procedure for establishing them may be laid down. In the former case, lists of prices will be included

in the agreement or in a schedule. Detailed tables of the articles, parts of articles or operations peculiar to the industry in question show the corresponding values in each case ; these may be expressed directly in money or indirectly in time units (e.g. in the textile industry, ready-made clothing industry, cutlery, stone-cutting, etc.) A variant of the method is to fix a normal rate for a standard article or operation, all other rates being expressed as a percentage of the normal.

Such a system is workable only with mass production, where the operations are largely uniform. In many industries the products and the operations vary from undertaking to undertaking and even within a single factory. The rate cannot then be a general one ; it must be fixed separately for each factory or for the different types of work.

Collective agreements take full account of this fact. Some of them simply stipulate that the rates shall be fixed by direct agreement between the employed and the worker or group of workers concerned. In order to protect the workers, however, it is often provided that they should have the help of a committee, which may collaborate in every case or only when the parties are unable to agree. The composition of these bodies varies greatly; they may consist of the shop stewards, staff representatives appointed in virtue of legislation or of the provisions of the agreement, persons appointed *ad hoc* or persons selected by the joint committees.

When the employer is left free to fix the rates, he is obliged to comply with certain conditions, such as informing the trade unions of the classification of operations, the method of striking averages, etc. It is frequently stipulated, or even prescribed by law, that the rates should be posted up in the factory and that the worker should receive a document showing the conditions of his employment. This ensures that he will not remain in ignorance of these conditions. The worker may also be obliged to keep a record of the time taken for his various jobs.

Piece rates of wages may be fixed with reference to the average output of a worker or with reference to time rates. In the former case, in order to ensure equitable results, many agreements specify the groups of workers to be taken into consideration (e.g. only skilled workers of a certain age, engaged on certain specified jobs), the operations to be taken into account and the working period to be selected as a basis for calculating the average (e.g. several weeks or a few months, with due allowance for certain

stoppages, for the normal working hours, etc.). The above-mentioned representatives of the workers and joint committees may co-operate, according to the agreement, in fixing the averages.

Special investigations are often undertaken to determine these averages, and the agreements sometimes stipulate that the worker must not try to avoid such experiments or to obstruct the investigators, and also that precautions should be taken to ensure that a true average and not a maximum is finally selected as a basis. It may also be provided that special attention be paid to the fatigue of the worker, to the periods of beginning and ending various operations, to personal factors, etc. (cf. the ruling of the British Industrial Court of 10 May 1935 concerning the North British Rubber Co. Ltd.).

In the U.S.S.R., output standards have been fixed because " technical standardisation is the most effective means of increasing the workers' output and their skill. . . " (section 21 of the agreement cited above).

When piece rates are calculated on the basis of time rates, the latter may be either fixed *ad hoc* or they may be the general rates stipulated in the agreement. It is generally provided that the piece rates should be so fixed that the average worker can earn at least as much as on time rates or, more usually, a certain percentage more than on time rates. This percentage varies from 10 to 50 in different industries and undertakings.

A system combining the general list of wage rates and the establishment of special rates exists in the English coal mining industry. In Northumberland and Durham, for example, county averages are fixed, and also rates per seam. Provision is made for an adjustment of wages when the worker's actual earnings do not reach the country average.

Different rates may be laid down not only for different operations but also for workers of different ages or for men and women (cf. the decision of the British Industrial Court cited above). On the other hand, many agreements state that the same rates must apply to men and women workers.

Some agreements stipulate that output should be the sole criterion in determining earnings ; others guarantee the worker a certain minimum level of earnings. Precautions are often taken to ensure that the worker is not deprived of part of the amount he might normally count on earning through defective material or temporary interruptions for cleaning, repairs or other necessary tasks. In such cases, the time rate is often paid ; if it is not high

enough, it may be increased by a certain fraction (say, 10 per cent.). The time rate may also be taken as the minimum when the worker, for reasons connected with the service, is temporarily removed from his job.

Finally — and this is the most important case — wages at time rate or a fixed minimum wage may be guaranteed to all workers employed on piece rates.

There is also the case where wages are fixed for groups of workers collectively. Some tasks are often entrusted to a group working together. It may then be thought desirable to fix a rate of remuneration for the group and lay down rules for the distribution of the total sum among the various members. The shares may be equal if all the workers are of the same category, but the group often consists of skilled and unskilled workmen, and the former are then entitled to a higher percentage of the total. In order to ensure a certain minimum wage for all, the agreement may stipulate that the number of persons in the group may not exceed a given maximum

It is sometimes provided that all the members of the group must be considered as working for a single employer, and the foremen or leaders of groups or the skilled workers are then forbidden to engage assistants in their own names.

Collective agreements often make provision for bonuses as an incentive to the worker. This method has spread considerably in recent years, more especially in connection with rationalisation.

As a rule, bonuses are payable when a certain normal output is exceeded, when the standard output is reached in less than the normal time, when a given standard of quality is reached or passed, when a saving in materials is effected, etc.

The following passage from the Russian agreement to which reference has several times been made is of interest in this connection :

> 11. The system of bonuses should be widely used for rewarding the best workers, engineers, salaried employees, " advance guards ", economic groups and workshops for having accomplished or exceeded the tasks assigned to them, as regards both quantity and quality, for having displayed initiative in the field of socialist emulation and the new forms of labour organisation, which are calculated to ensure the complete fulfilment, or even more, of the industrial and financial plan.

When, as is often the case, the worker is guaranteed a minimum wage (e.g. the normal hourly rates), the system is a mixed one.

A bonus may also be guaranteed to a group of workers if a

certain level of output is reached or is reached in a given time. In some industries in England, more particularly, there is a tendency to extend the benefit of the bonus, so that not only the workers directly engaged in production but all those in the undertaking should share in the advantage. The system thus takes an intermediate position between time rates and payment by output. The special conditions of such systems are generally regulated by works agreements.

Apart from these general provisions, collective agreements regularly contain special guarantees for workers working on piece rates. As any change in the scale may easily give rise to disputes, the procedure for amending the rates is prescribed in many agreements. If the fixing of the rates is left to the employer, it is often stipulated that they cannot be changed except when new processes are introduced or when there is a fundamental change in working conditions. If the rates are fixed jointly by the employer and the staff representatives or between the industrial organisations concerned, it is normally stated that they cannot be changed except by agreement between the same persons or bodies.

It is further stipulated that no change should be made in the rates simply because the workers, by special skill and effort, earn high wages. On the other hand, if the workers are not able to earn the normal wage, or if there has been some mistake in fixing the rates, it is always possible to alter them. Many agreements expressly provide that the rates should not be changed if only one worker is unable to reach a normal output.

If the work done is unsatisfactory, the worker is not paid for it, but many agreements limit the loss of wages to cases in which the defect in the product is due to some fault of the worker. In order to guarantee fair treatment for the workers it may be stipulated that joint committees or staff representatives should check the quality of the products and supervise the payment of wages, or that they should intervene in the event of a dispute.

Special cases. — Commissions, percentages or even shares in profits are all special forms of remuneration based on the worker's output. Provisions concerning them are naturally more frequent in salaried employees' agreements than in workers'. It may be noted, however, that certain agreements covering taxi-drivers guarantee them a fixed wage with a percentage of takings.

In view of their special nature, the question of commissions and percentages is often left to be regulated by individual agree-

ment. But some more definite guarantees may be inserted in agreements concerning commercial travellers, representatives, etc. Sometimes the scheduled rates are guaranteed in the event of the commission earned falling short of that figure. There are sometimes provisions forbidding the employment of commercial travellers unless a fixed wage is guaranteed. Joint committees may intervene if the parties do not agree as to the rate of commission, etc. Compensation may be paid to a traveller who, for instance, is employed on office work. It is often stipulated that the employee may apply, at specified dates, for a statement of the commission earned.

In several countries (such as Germany and Italy) the collective agreements or similar regulations for hotels, boarding houses, restaurants, cafés, etc., have abolished tips, replacing them by a percentage (10 to 15 per cent.) added to customers' bills.

One important function of collective agreements is to regulate the distribution of the percentages thus charged. There are individual and collective systems in force. In the former case, the employees in contact with the customers are entitled to the sums paid by the latter. This method is met with most frequently in restaurants and cafés. Under the other system, which is commoner in hotels, boarding houses and sometimes in large restaurants, all the sums collected are pooled and distributed to the staff in accordance with an agreed scale. To prevent possible abuses the agreements must ensure an equitable distribution and provide for supervision. They therefore state first of all what categories of staff are entitled to share in the distribution : only those in direct contact with customers, or those and other groups, such as kitchen staff (e.g. in the Italian national agreement). Then the shares must be specified. The agreement may merely mention the gross percentage due to various groups of staff and leave the details to district or local agreements (Italy). Other agreements make the undertaking responsible for regulating the distribution of the sums received, stating that this should be done in collaboration with representatives of the staff. Again, the agreement, especially if it is for a single town or district, may fix the categories (in hotels, for instance : floor staff, restaurant staff and hall staff), classify the staff in these categories and prescribe the share to which each employee is entitled.

Various provisions govern the supervision of the distribution of gratuities. Staff representatives may be given the right to inspect the bills ; in some cases they are responsible, with the approval of the employer, for distributing the money.

The agreements generally also lay down guaranteed minimum wages, so that if the percentages paid by customers do not reach these rates the employer must make good the difference. Under some agreements the employer must always pay the fixed wage irrespective of the fluctuating percentages. Sometimes, also, it is agreed that the percentages will go to the employer, who undertakes to pay fixed rates of wages to his employees.

In Italian agriculture, some collective agreements are intended to guarantee to the workers a share in the gross output of the farm. The distribution of the produce varies according to the type of agreement and the productivity and organisation of the farms : as a rule, the workers are entitled to 33 per cent. of the total produce. A monthly or weekly advance may be granted them, subject to certain conditions.

As profit-sharing is limited to a single undertaking, it is unusual to find this method of remuneration dealt with in collective agreements. But the agreements between certain firms and their workers contain provisions on the subject, the workers being entitled to inspect the accounts of the undertaking.

Sliding Scale of Wages

There are two sets of factors that may lead to the adoption of a sliding scale of wages — social and economic ones.

Social factors. — In view of the fact that the worker depends for his livelihood on his wages, efforts have sometimes been made to adjust wages in such a way that the worker will be able to maintain a certain standard of living irrespective of price variations. Many agreements make provision for a fixed basic wage and a fraction varying with the cost of living. This method spread in some countries when the currency was fluctuating rapidly (e.g. Austria and Germany). The system adopted may be simple or elaborate. The simplest is to add to the wage a cost-of-living bonus, the amount or percentage of which is specified in the agreements. But this empirical method is not usually considered satisfactory. A general cost-of-living index has been found more satisfactory, the nature of the index being the deciding factor in determining wages. But it is becoming increasingly rare for the index to be mentioned in agreements, and the question, although of undoubted practical importance, is not within the scope of this study. In countries that regularly publish a cost-of-living

index, this official index is generally used for the purpose of collective agreements (Australia, Great Britain, Sweden, etc.).

The first necessity is to fix the basic wage ; this may be done by agreement between the parties, or the index may be used to determine it also. The basic wage may even be fixed by the authorities, in which case the agreement has simply to adapt wages for a certain period to the conditions in different industries and districts.

The variable fraction may be fixed either by a special committee meeting at regular intervals (say, every three months) or else automatically in accordance with the movements of the index. Sometimes minimum and maximum limits are fixed, beyond which wages do not follow the index. Quite often the agreements merely fix a minimum. If the limit is reached, the whole agreement must be altered to allow for the variations in the index adopted.

Economic factors. — In some industries or occupations the selling price of the products or the volume of the receipts may be the factor determining the variable fraction of the wages of workers engaged in that branch of production. It is impossible to go into details, but the English coal-mining industry may be taken as an example. The agreements in force provide that the variable part of wages should be determined by the receipts for the district in question, after deducting the cost of production (not including wages). There are detailed provisions as to how receipts are to be reckoned ; joint committees are set up by many of the English agreements with powers to supervise the proceedings and arbitrate if necessary. There are certain restrictions to prevent the wages of the lowest paid workers from falling below a specified minimum.

Wages in Kind

Many collective agreements try to abolish payment in kind, substituting therefor cash wages. Mention was made in an earlier paragraph of certain allowances that took the place of the traditional provision of accommodation, food, heating, etc.[1]

When a collective agreement recognises payment in kind it often mentions, in general terms, that this payment constitutes part of the worker's remuneration. Many agreements clearly define the employer's obligations. In breweries or the wine trade,

[1] Cf. above, p. 16.

for instance, the employer must supply the workers with a certain quantity of beer or wine. In the transport industry, clothing must be provided (e.g. uniform for railway and tramway employees, etc.). When it is customary for the employer to provide board and lodging, it may be stipulated (as in the case of hotels or restaurants) that the food must be sufficient and of good quality; sometimes the matter is regulated in even greater detail.

There are two branches particularly in which payments in kind are still of some importance — coal-mining and agriculture.

In mining districts more than anywhere else it is customary for the workers and employees to be given dwellings either as part of their remuneration or at a nominal rent. In coal-mining and also sometimes in the heavy metal industry it is likewise usual to give the workers a specified amount of coal or to sell it to them cheaply. Special agreements are even concluded on this subject (e.g. Great Britain : Durham coalfield).

The text generally enumerates the categories of persons entitled to this allowance, distinctions being made according to sex, civil status, length of service, etc. The rights of members of the family are also regulated.

In agriculture, allowances in kind often form an important fraction of the worker's remuneration. Working conditions vary so much in different regions and for different crops and also with differences in the social and economic structure of agriculture that it is impossible to go into details here.[1]

The points that may be covered by a collective agreement should, however, be noted. The regulations vary according as they apply to salaried employees or to workers in agriculture, to unmarried or to married persons. The employer must provide either a house or a room of a given size satisfying certain hygienic and economic conditions; heating and lighting must also be supplied, as well as food comprising a given quantity of corn, potatoes, milk, etc. Sometimes, in place of food, the worker may receive a certain amount of land for cultivation and stock-rearing. The agreements usually make provision for the settlement of any disputes. (Cf. the principles laid down in Czechoslovakia, the Swedish collective agreements, etc.)

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Collective Agreements in Agriculture*, Geneva, 1933 (especially Chap. II, secs. I and II, 3).

The Payment of Wages

The payment of wages is a matter both for legislation and for collective agreements ; the latter often contain rules on the subject, frequently supplementary or modifying the legislation.

Dates and Place of Paying Wages

Agreements, in the same way as the legislation, often prescribe that wages should be paid at specified intervals, varying in different countries and different industries. When the maximum interval is fixed at a fortnight or possibly even longer, many agreements stipulate that the worker should receive a payment on account every week. This advance is generally fixed at a high percentage (80-90 per cent.) of the actual earnings up to the date in question.

Agreements often go further than the legislation in that they prescribe shorter intervals, generally one week, for the payment of wages. The strict principle of weekly payment is sometimes relaxed by a clause permitting fortnightly payment (with the right to a weekly advance) when the special conditions of the undertaking so require. In any case, it is frequently stipulated that if a worker leaves an undertaking before the usual pay day, his wages must be paid immediately.

When workers are paid by output, the agreements provide, as is done also by many laws, that the employer must make payments on account on the usual pay day if a worker has not finished his task or if his actual earnings have not been calculated.

The actual pay day is also often specified ; some agreements state that it must be a working day, sometimes excluding Saturday ; others mention a definite day. It is normally agreed that wages should be paid during or immediately after working hours. In the latter case it may be stipulated that the whole operation shall not exceed a certain time — from 10 to 30 minutes. Beyond that limit the worker may claim compensation for having to wait (e.g. in the building industry, Netherlands) or payment for one hour's overtime (some Australian awards).

The place of payment is generally the office of the undertaking, but if the workplace is far from the central office (building, public works, etc.) payment may be made at the workplace or special remuneration given for the time required to go to the office.

Guarantees of Wage Payment

The rule that wages expressed in terms of money must be paid in cash, which is laid down in the legislation of most countries, is often confirmed by collective agreements. Payment by cheque may be recognised as equivalent (United States, mines). The possibility of drawing bills in payment is accepted in the coal-mining agreement of Illinois (United States). These bills are not negotiable or transferable, and the worker must be paid the full nominal amount ; the trade unions exercise a certain supervision over the system. It should, however, be noted that this method of payment is prohibited in a great many countries.

Collective agreements often provide, as do some laws, that when payment is made the employer must supply the worker with a slip indicating the gross wage, its components, any deductions made, the net amount, etc.

The most important provisions are those dealing with the negative side of the problem — whether deductions from wages are permitted or not.

There may be a general clause prohibiting any deductions not specifically mentioned in the agreement (e.g. some South African agreements). In particular, it may be forbidden for the employer to exert pressure on the worker to make him purchase goods from the employer or from a store indicated by him, or to make him accept a lodging provided by the employer. It is often stipulated that the employer must supply the worker, free of charge, with tools, requisites, etc., as well as with raw materials, and that he make provision for the return of the tools in good condition. The workers have often to be paid an allowance if they are authorised to use their own tools. If accessories are supplied by the employer, the agreement sometimes states that he may, after consulting the workers' representatives, lay down rules as to the normal quantities to be used ; a worker who uses more may be required to compensate the employer.

The amount that may be deducted from wages may be limited by collective agreement in such cases as the loss of materials or tools entrusted to the worker, for which he must pay compensation. It is sometimes provided that the employer may not withhold, on this account, more than a given fraction of the weekly wage (5 per cent. for plumbers in the Netherlands). If the agreement permits the employer to continue the custom of making the worker buy certain of his working requirements from him, it very often

stipulates that he may not charge more than a fixed price, possibly the cost price (e.g. for explosives used in mines), or that the worker's wage, after deducting the cost of these articles, may not fall below the agreed rate. Similarly, prices may be fixed for the provision of meals, accommodation, working clothes, etc. (South Africa : passenger transport).

Deductions for faulty work may also be limited by the collective agreement. In the glass industry, for instance, faulty workmanship, breakages, etc., are regulated in great detail ; the collective agreements for hotel and restaurant staff likewise often limit the employee's liability for breakages, wear and tear, etc., to cases where he was guilty of some fault or restrict the amount payable to a certain percentage of the value. The workers are generally bound to inform their superiors at once of any flaw in the materials or defect in the machinery : joint committees may be set up to deal with disputes. Several agreements concluded in France during the summer of 1936 prohibit deductions for faulty work.

The problem of disciplinary penalties, more especially fines, is closely linked up with that of deductions from wages, and the laws of most countries contain at least some general rules on the subject. Italian legislation leaves the question to be dealt with by collective agreements.

Fines are usually laid down in works regulations, but it is interesting to note that many collective agreements stipulate that these regulations may not depart from the terms of the agreements.

Deductions from wages in respect of fines are prohibited in many agreements (Australia, France, South Africa). Agreements in the mining industry often contain detailed rules concerning the enforcement of disciplinary measures. In particular, the worker may be penalised if the coal or mineral he produces is impure, and the collective agreements prescribe the fines (e.g. in the United States) or even stipulate that the worker is to be suspended temporarily from his employment (Great Britain : iron mines in Cumberland). If the offence is repeated, the penalty is more severe — prolonged suspension or immediate dismissal. In order to protect the worker to some extent, it may be provided that staff or trade union representatives should be allowed to examine the product complained of.

Penalties may also be imposed if the worker remains absent without permission and without valid reason, but the agreements often stipulate that no action should be taken on account of a single absence. In the mining industry, more especially, workers are punished for stopping work too early, and the trade unions

undertake to see that their members observe the regulations (cf. the Cumberland agreement cited above).

On the other hand, the workers receive some guarantees in the form of clauses permitting them to appeal to a joint committee and stipulating that the fines will be used for the welfare of the workers in general (e.g. for a sickness or other insurance fund), etc.

When as in Italy, there are general regulations concerning works discipline, the agreements specify the particular cases in which disciplinary action can be taken and the maximum penalties ; the latter are graded according to the gravity of the offence (fines of varying amounts, suspension, dismissal).

Payment of Wages when Work is Interrupted

The two main obligations arising out of the individual contract of employment — wages and the performance of work — are so closely connected that the cessation of the one automatically involves the cessation of the other. Yet the strict application of this principle would be unjust if it meant that the worker lost his wages whenever he was prevented from working through no fault of his own.

Quite a number of collective agreements in several countries include provisions on this point, the solutions being adapted to the needs of various industries and occupations. A distinction is usually made between interruptions in work caused by the worker and those caused by the employer. But it may be noted at the outset that there are agreements which stipulate that remuneration is payable only for work actually performed, so that, according to ordinary law, the worker receives no wages if his work is interrupted. Other agreements accept the same principle but permit exceptions, which are frequently restricted to certain specified cases. On the other hand, a number of agreements lay down general regulations for the whole question. An intermediate solution of the problem is found in some agreements that set up mutual aid funds to continue the payment of wages wherever work is stopped or in certain circumstances (e.g. sickness).

The most important causes of interruption for which the worker is held responsible are sickness and accidents.

In the event of sickness, the worker has certain obligations. He must send a medical certificate to his employer ; under some

agreements, he must allow himself to be examined by a doctor selected by the employer, or he may be required to be regularly inspected.

The employer's obligations vary. In the first place he must keep the worker's post open for him — a matter that will be discussed later. The extent of the obligation to pay wages varies in different cases.

Most agreements make no distinction between different groups of workers, but casual labourers are often excluded. Sometimes the payment of wages during sickness is guaranteed only to certain categories (in British coal mines, for instance, only to deputies, overmen and shot lighters).

The actual extent of the obligation is often determined with reference to sickness insurance. It is sometimes provided that when a worker is ill he receives only the cash benefits granted by the sickness fund, which may be instituted by the collective agreement (as in Italy) or by law.

Frequently, however, the agreements require certain additional payments from the employer, such as the payment of insurance contributions (in many Netherlands agreements), or they may regulate the working of the insurance scheme to the worker's advantage (e.g. in the Netherlands : fixing the daily wage to be taken as a basis for benefits, determining the length of the benefit period, co-ordinating the rules of the insurance institution and the terms of the agreement, etc.). Under quite a number of agreements the employer is obliged to pay to a worker who is sick the difference between the cash benefit of the insurance institution and his actual wage, or it may be agreed that the employer pays a fraction of the wage which, with the cash benefit, will make up the whole, or a high percentage of the worker's total wages.

Finally, the collective agreement may regulate the payment of wages quite apart from social insurance. This is the case more especially when the agreement has merely to supplement or adapt to the needs of a special industry the provisions concerning wage payment that already exist in the legislation of the country (civil code, commercial code or legislation concerning contracts of employment).

Some agreements make the payment of wages during sickness conditional on a certain length of service, while others guarantee it from the outset.

The worker may draw his full wage or only a percentage. In the latter case, the fraction may rise with the duration of his

illness (e.g. from 10 to 30 per cent. according to several Czechoslovak agreements) ; but the contrary may also be stipulated, the full wage being paid for the first half of the period of absence and 50 per cent. thereafter (Spain : basic agreement for Madrid commercial employees), or half being paid for the first few weeks and a quarter for the rest of the period covered (Austria : guiding principles for the Vienna metal industry).

The rules may differ for undertakings of different size, the employees of larger undertakings having more extensive rights (e.g. the Spanish regulations cited above, which distinguish between undertakings employing less than 5 employees and those employing 5 or more).

Some agreements provide for a waiting period, usually of from 1 to 3 days, but it is also stipulated that if the illness is a lengthy one wages will be paid as from the first day.

The period for which wages are paid is limited ; it may be a few weeks or a few months, being longer as a rule for workers with long service. When that period expires, the worker may be dismissed, in which case he may (e.g. in Italy) be entitled to compensation.

Some agreements also deal with relapses — i e. when the worker has a second attack of the same disease within a specified period after the end of the first attack. As a rule, the worker can claim the payment of his wage only in so far as he did not exhaust his rights during the first period. In the case of a different disease, he retains his full rights provided that he worked for a certain minimum period between the two illnesses.

When a worker has to attend a certain place for treatment, some agreements, especially in Austria and Czechoslovakia, guarantee the payment of wages for the hours thus lost, up to a specified maximum (say, one week's wages).

The same rules often govern sickness and accidents, but in some cases the employer's obligation to pay wages applies only to industrial accidents. Other agreements provide that in such cases the full wage must be paid for a longer period (e.g. 26 weeks). Many agreements treat childbirth on the same footing as illness.

In addition to sickness and accident, there are other reasons that may be recognised by agreements as justifying the worker's absence and the payment of remuneration. These include domestic contingencies, summonses to appear in court (provided the worker himself is not the culprit) and the performance of certain functions

or public duties. In these cases the wage, or a fraction thereof, is due only for the hours of work actually lost. The maximum period of absence permitted varies from a few hours to one or two days, according to circumstances.

Some texts contain very detailed provisions on this point. An interesting example is the 1921 agreement for the Vienna metal industry, which has served as a model for numerous Austrian agreements and which contains a long list of reasonable and unjustifiable absences.

The cases in which the employer is held responsible for the interruption vary greatly in different industries and for different groups of workers. One may distinguish factors external to or inherent in the undertaking.

According to most agreements it would seem that the worker cannot claim any remuneration if the working of the undertaking is stopped by external factors, especially by *force majeure*. Yet there are industries that are particularly exposed to uncontrollable external forces—building, surface mines and quarries, in which weather conditions play an important part. In these industries, collective agreements aim at protecting the worker against a loss of earnings through a stoppage due to bad weather. Various methods are employed : it may simply be stated that time lost will be made up by extending hours on other days. In this case ordinary or overtime rates of wages may be paid for these hours. Again, there are clauses guaranteeing the payment of wages, or a fraction of wages, for time lost in this way. In the Netherlands building industry, for instance, a worker can draw 70 per cent. of his wage for three consecutive days, subject to a maximum of 15 days in any three months. Interruptions due to cold are excluded from this rule. Many attempts have been made to solve the problem in Great Britain, but without any positive result. Mention may be made of the plan for creating a fund, to which employers and workers would contribute equally, to guarantee the payment of wages during interruptions in work.[1]

Another solution is this : a worker who comes to work but cannot be employed because of the weather receives a fraction of his wage proportionate to the time spent in waiting. A worker who does not turn up receives nothing (in some English quarries).

[1] Cf. MINISTRY OF LABOUR : *Report on Collective Agreements between Employers and Workpeople in Great Britain and Northern Ireland*, Vol. I, p. 390. London, 1934.

In other industries, wages are paid in respect of interruptions caused by factors inherent in the production process (shortage of raw materials, power, etc.). Often the agreements cover only workers on piece rates, who are obviously exposed to more serious risks than the others (e.g. in the pottery and glass industries), but quite frequently all workers are covered. It is generally stipulated that the workers should, as far as possible, be employed on other tasks or that the time lost should be made up later.

When the payment of wages is guaranteed, workers on piece rates usually receive hourly wages or a certain percentage of their average earnings. In some industries, more detailed rules are laid down (e.g. Czechoslovakia : sheet glass works).

Payment is limited to a certain period — a few hours or a few days.

By way of example, reference may be made to the solution adopted in the English agreement of 1 June 1930 for the light casting industry, in the event of a shortage of raw materials. If the shortage is due to the employer's negligence or to an error by the foreman or the cupola man, or if the metal, in the foreman's opinion, is not fit to be worked, the workers must be paid two-thirds of their wages ; if the supply of power (electricity, gas, water, etc.) is cut off owing to some cause for which the firm is not responsible, the employer is not obliged to pay any remuneration. If the shortage of metal is due to some cause within the undertaking — a lack of power or an accident to machinery — but that cause escaped the supervision exercised by the employer, the latter is not presumed to be responsible, but a joint committee must settle the question of responsibility within a fortnight. The employer can escape his liability altogether by paying a lump sum of £5, provided that the loss to the workers did not exceed that amount. No compensation need be paid if the lost earnings can be made good the following day.

CHAPTER III

HOURS OF WORK

The question of hours of work includes the following main problems that are regulated by collective agreement : the limitation of hours, holidays with pay and the weekly holiday. The present survey will be restricted to these points.

Normal Hours of Work
Respective Spheres of Legislation and Collective Agreements

The limitation of hours, like the fixing of wages, was early dealt with by collective agreement, and it has also been the subject of legislation. In most countries, therefore, the legislation and the work of the industrial associations stand side by side. In order to have a proper appreciation of the part played by collective agreements and similar regulations in this field, it will be well, before studying their contents, to consider very briefly the main features of the relationships between the legislation on hours of work and the collective agreement. The various possibilities may be summed up as follows :

(a) According to the scope of the legislation :

In the absence of legislation, the regulation of hours of work is left entirely to collective agreements, but this situation rarely arises. More frequently the legislation applies only to certain industries or groups of persons ; for others, collective agreements are necessary. The most frequent case of all is that in which the legislation deals only with some aspects of the question, leaving the others for collective regulation.

(b) According to the structure of the legislation :

When the legislation regulates in detail the whole question of hours of work, all that is left for the collective agreement is to

prescribe conditions more favourable than the legal minimum.

Very often the legislation defines the functions of the collective agreement by attributing to it certain specific tasks in the regulation of hours. There are several alternatives possible. The law may lay down a general principle to be applied by collective agreement according to the needs of various branches or districts. This may be done directly, or it may be done indirectly, as when the collective agreement is used as a basis for administrative regulations. Again, the legislation may deal with certain details of hours of work but not regulate it exhaustively. The collective agreement must then fill the gaps or adapt the legal standards to occupational needs. Finally, the legislation may leave the way open for exceptions to be fixed by collective agreement.

It will thus be seen that the functions of collective methods of regulation, and therefore also their practical value, may vary very greatly according to the legislation in force.

The Limitation of Hours of Work

Attention may be confined to three aspects that are constantly dealt with in collective agreements : the definition of hours of work, the fixing of limits and exceptions.

Definition

The scope of the legislation depends largely on the interpretation of the term " hours of work ". Many agreements simply refer explicitly or by implication to the legislation or custom, but several others are more definite. It may be stipulated that hours of work should be taken to mean the hours of actual work, excluding breaks. This is the most usual method.

It is sometimes provided that hours of work include certain periods not devoted to actual work, and the breaks or interruptions that are to be included are enumerated. This system is common in some industries or for certain groups of workers. For instance, breaks may be assimilated to working hours in undertakings where work proceeds continuously by day, by night and even on Sundays, or when the special nature of the work so requires (in mines, for example). If the work is very dirty, the time the worker needs for washing may be included in working hours. When the worker has a considerable journey to the workplace, the whole or part of that time may be reckoned as working time (in mines,

building or civil engineering). In some cases the travelling time is reckoned and paid for separately.[1]

In certain industries, interruptions inherent in the service may be counted as hours of work, as for instance when a worker has to wait for fresh materials (textile industry) or when he delivers finished articles and receives other work (ready-made clothing). In some occupations, again, the work involves travel or prolonged waits in addition to actual work (in various types of transport work, for watchmen, doorkeepers, messengers, etc.). In that case hours of work, which are often longer than those of other workers, are usually taken to be the time during which the worker is at the employer's disposal.

Fixing of Limits

Interesting as it might be to study the various limits set to hours of work, that subject is just as out of place here as was the study of actual wage rates ; for present purposes the important thing is the methods by which collective agreements fix these limits. It may be mentioned in passing that the limits may refer to the day, the week or both these periods. When the work is done in shifts, the length of the shift may be given instead of the working day.

The first case to be studied is the most frequent one, where hours of work coincide with the working hours of the undertaking, there being stoppages at regular intervals. Certain special features of continuous process undertakings will then be considered.

Discontinuous Work

If hours of work are fixed by the day, this does not necessarily mean that all working days are of the same length. The working day on Saturday or the eve of a public holiday is often shorter than the normal, ending at midday or at 1 or 2 p.m.

When hours are fixed on a weekly basis, their distribution over the working days is frequently left to the employer's discretion or to local or works agreements. But collective agreements sometimes set limits to the number of days over which the hours can be spread (5 or 6 days) or to the number of hours that may be worked per day. The same applies when a period of more than

[1] With regard to agriculture, cf. INTERNATIONAL LABOUR OFFICE : *Collective Agreements in Agriculture*, Studies and Reports, Series K (Agriculture), No. 11, Geneva, 1933, pp. 79 *et seq.*

a week is taken as a basis. Some agreements fix a limit of two weeks, but longer periods of calculation are not generally permitted for discontinuous processes. Such a possibility exists, however, in the Italian agreements for a reduction of hours, concluded at the end of 1934 — e.g. in the agreement of 23 November for the engineering and heavy metal industries.

The actual arrangement of the time-table and breaks is often left to the employer, but some agreements state that he must consult or come to an agreement with the staff representatives. Quite frequently the agreement specifies the time-table and breaks; it may, for instance, stipulate that work must begin and end between 8 a.m. and 6 p.m. Some agreements simply fix either the hour at which work will begin (before which no workman can be required to work) or the hour at which it must normally cease. Others again mention the exact hours at which the working day begins and ends.

Sometimes it is provided that work will proceed without a break, or at least with only a brief interruption after a certain time (say, five hours). More frequently, the agreement stipulates that there must be a break, the length of which may also be fixed (e.g. from midday to 2 p.m.).

In certain special cases, the normal limits may be exceeded, as for instance when time lost has to be made up by extending the working day, more especially in undertakings where the work is liable to be interrupted because of the nature of the processes or because of bad weather (glass or china works; building). Even the time lost on certain holidays has sometimes to be made up. In these cases an hourly or weekly limit is generally set to these extra hours, and it may be stipulated that lost time cannot be made up after more than, say, one week has elapsed. The staff representatives may have to be consulted or to give their consent.

For similar reasons, the time-table in seasonal industries is often different in the season from what it is in slack periods, or in summer and in winter (building industry in England and in Belgium). Some regulations provide that a worker may be required to make up individual lost time, even when the loss was not due to any fault of his.

The regular hours of work of workers employed on unhealthy or particularly arduous tasks, in a damp atmosphere or at a high temperature are usually shorter than the normal hours for other workers (e.g. in mines). Some agreements prescribe shorter hours for young workers and women (Austria : large flour mills, 1933).

Continuous Process Undertakings

The special conditions of continuous process undertakings or sections of undertakings which work day and night, perhaps even on Sundays, with a system of shifts, require some adaptation of the general provisions concerning the limitation of hours. Examples are the metal, chemical, pottery and glass industries. When continuous and discontinuous processes exist side by side, the agreements sometimes enumerate the undertakings or sections belonging to each category.

The work is performed in regular shifts, but only the length of the shifts can be exactly limited, their actual distribution being necessarily elastic. There may be two, three or four shifts daily. Moreover, the hours of work may be reckoned over several weeks, and even the length of the shift may vary from week to week (e.g. Australia, metalliferous mines in New South Wales : 88 hours a fortnight, distributed as 6 shifts of 8 hours the first week and 5 shifts the second). Some agreements, however, fix not only the duration and the number of shifts, but also the time-table of these shifts.

Breaks are not usually specified, but the ordinary interruptions in the work are often considered as breaks.

Agreements that do not directly arrange a plan of rotation for the workers try to ensure that they will be employed on the various shifts in turn and that, in particular, they will all have a fair share of night and Sunday shifts. For this purpose Sunday is often taken as the day for shifts changing over ; instead of the normal three shifts, there are two longer shifts on that day, so that every worker has a 24 hours' break on one Sunday in three. Other agreements provide for a minimum rest period between two shifts. These two methods may be combined (e.g. Sweden, metal works).[1]

The night shift is often considered as normal work, but sometimes higher remuneration may be paid for it, as is generally done for Sunday or week-end shifts. What is meant by a Sunday shift is often defined in the agreement : it may, for instance, be defined as a shift beginning on Sunday morning, as distinct from

[1] For details on all these points, the reader may be referred to the publications of the International Labour Office concerning hours of work, and more especially to the Grey-Blue Reports on the reduction of hours of work submitted to the Nineteenth and Twentieth Sessions of the International Labour Conference.

one ending on Sunday morning or beginning on Sunday evening (coal mines in Upper Silesia, Poland).

A worker who does two successive shifts may receive special remuneration (e.g. as for overtime) or be given a longer rest period.

Exceptions

Exceptions to the normal working hours may denote an extension or a curtailment of hours. Collective agreements seek to safeguard the worker against the dangers of both possibilities — in the one case undue fatigue, and in the other a loss of earnings.

Overtime

Compulsory prolongation of hours not reckoned as overtime. — Not all extensions of hours are recognised as overtime. Generally speaking, it is often stipulated that the hours of work may be exceeded by a few minutes (perhaps 10 minutes) without any compensation.[1] Similarly, the workers of one shift must wait for those of the succeeding one when changing over. Many regulations provide that workers must change their clothes, wash, etc., outside working hours. Sometimes even certain operations connected with the work, such as the cleaning or inspection of machinery, attending to animals (agriculture), etc., must be done before or after the hours of service. But the contrary may also be stipulated. Some persons, such as foremen, supervisors or inspectors, may be required to carry out certain of their duties after the normal working hours.

In cases of *force majeure*, accidents, disasters, etc., the legislation usually permits an extension of hours, and this is often confirmed by collective agreement. In periods of general distress it has sometimes even been agreed that extra hours or shifts should be worked without being reckoned as overtime ; consequently, there was no increase in the rate of remuneration (e.g. in German mines and the heavy metal industry after the War).

Quite a number of agreements provide that workers on short time who are required to work longer than usual, but not more than the normal hours of work, are not entitled to overtime pay. But the contrary is stipulated in the agreement for the Netherlands book trade.

Extra work performed by the worker of his own accord, without

[1] But cf. above, pp. 28, 33.

being asked by the management, is not usually recognised as overtime by collective agreements.

Restrictions. — The amount of overtime that may be worked is very often limited by the agreements. Sometimes they merely recommend that there should be as little of it as possible, that it should be exceptional, that it should not be so arranged as to exhaust the worker, etc. In other agreements it is restricted to cases of necessity (several French agreements of 1936); the Italian agreements of late 1934 for the reabsorption of the unemployed prohibited overtime in general, permitting it only in exceptional cases of urgent necessity.

It has sometimes been ruled to be an infringement of the agreement when overtime was worked instead of engaging extra staff or organising a second shift (Belgium, book trade, 1931).

According to certain agreements, a worker may refuse to work overtime if he can adduce valid arguments for so doing; under others, he may not be required to work overtime on Sundays or public holidays (Netherlands : house-painting, 1931).

Collective agreements may also fix quotas for overtime, specifying the aggregate and the individual number of hours of overtime that can be required of the workers over a given period (day, week, year, etc.)

The procedure prescribed for authorising overtime or for paying remuneration for it may indirectly restrict its amount.

Organisation of overtime. — Many agreements leave the employer free to decide when overtime is necessary, but others try to restrict this liberty by obliging him to give due notice to the workers concerned or to consult their representatives. Some regulations state that the decision to work overtime must be taken by the employer in agreement with the staff representatives, and more especially with the works' councils or committees, where such have been instituted by law. In Poland, the collective agreement for the iron industry of the Dombrowa district prescribes that overtime must be authorised by the factory inspector and must be agreed to by the workers. A joint committee, consisting of the employer and representatives of the trade union, may also be required to take the decision. Again, there may be a mixed system, the employer being entitled to decide alone in urgent cases, whereas the workers must give their consent in other

The Italian agreements already cited provide that an employer who wishes to make use of overtime must inform the employers' organisation, which in turn notifies the workers' organisation. The two organisations then discuss the validity of the motives for the overtime ; in the event of failure to agree, the corporative inspectorate decides.

Definition of overtime. — With regard to the meaning of overtime, collective agreements may provide in general terms that any work performed outside the regular working hours is considered overtime. Some agreements specify that overtime is to be reckoned on the basis of daily hours, so that the worker can claim special payment whenever the daily limit is exceeded Others take the week as a basis, so that the worker is entitled to overtime pay only when his work exceeds the weekly maximum, irrespective of the number of hours worked on any given day. The two methods may be combined (Austria, paper industry, 1931).

A distinction is often made between overtime due to various causes. These are sometimes enumerated (e g. repair work and other work that cannot be postponed, work essential in the interests of the undertaking or the public, etc.). Many agreements make a distinction between ordinary overtime, night work and work on Sundays or holidays ; this is mainly a question of different rates of pay.

Rates. — The increase in the rate of pay for overtime is generally anything from 15 or 25 to 100 per cent. There are sometimes special rules for reckoning the rates for workers on piece rates, their average earnings serving as a basis.

The rates may be uniform, but it is more usual to find a scale — generally based on the above-mentioned distinction between ordinary overtime, night work, Sunday work and work on public holidays. For this last type, the rate is often 100 per cent. above the normal (e.g. Polish Upper Silesia, coal mines).

For ordinary overtime there may be a flat rate or a progressive scale in accordance with the number of hours of overtime ; sometimes, special rates are paid for work during rest periods.

A considerably higher rate of remuneration is usually paid for night work or Sunday work, but in continuous process undertakings, where the shifts take turns at working by night or on Sunday, any special rates that may be prescribed differ less widely from the normal than they do in ordinary factories where such

work is exceptional. In certain industries, detailed provisions may be drafted to deal with special cases.

Short Time

A number of collective agreements contain provisions concerning short time and the corresponding reduction in wages ; this problem has become particularly acute during the present economic depression. Often the employer is required to give notice in advance of his intention to work shorter hours ; in some cases he must terminate the contracts of employment, giving the due period of notice. Other agreements make the consent of the staff representatives or of a majority of the staff a necessary condition.

Short time may be applied either by rotation among the staff or by alternate periods of shorter hours and normal hours.

The texts may set limits to short time. They sometimes fix a maximum reduction in hours that may not be exceeded without the consent of a joint committee (Netherlands, book trade) ; in other cases it may be agreed that wages must not be reduced unless hours of work are shortened by a certain minimum amount — say, five hours a week.

Among the Italian agreements to which reference has frequently been made, those covering industry provide for the institution of a fund to make good the loss of earnings suffered by heads of families working short time. The fund is constituted by employers' and workers' contributions.

If short time is a temporary measure to keep the workers in employment in exchange for a sacrifice of wages on their part, some very few agreements try to guarantee the workers a certain stability of employment. London taxi-drivers, for instance, are guaranteed a 48-hour or a 36-hour week, spread over not more than 6 days ; the length of the working day may not be less than 5 or more than 10 hours.

In the ready-made clothing industry in the Netherlands, the 1932 agreement guarantees 780 hours of work for six months to all workshop hands who have been in the employer's service for not less than 5 months ; the employers also undertake not to dismiss staff during the slack season (17 December to 4 March and 2 July to 17 September), while the trade unions pledge themselves to prevent workers, as far as they can, from breaking their contracts without good reason during the remainder of the year.

The question of the reduction of hours of work as a remedy for unemployment is irrelevant here ; it is closely linked up with the

question of the regulation of working hours in general. It may be noted, however, that some agreements concluded for this purpose make it compulsory for the employer to re-engage some unemployed workers.

Holidays with Pay and Public Holidays

After dealing with hours of work, collective agreements generally go on to speak of holidays with pay and, to some extent, public holidays.

Holidays with Pay

A brief summary of the question is all that will be given here ; for fuller details, the reader may be referred to the report on the subject submitted to the Nineteenth Session of the International Labour Conference.

There are two main problems dealt with in the agreements : the existence of holidays and the payment of wages. Holidays are often granted only to those who have a certain length of service, varying from a few months to a year. Detailed rules may be laid down for calculating this period, prescribing, for example, that the transfer of the undertaking and absence from duty on account of sickness, accident or even, in some cases, the suspension of work are not, within certain limits, to be considered as interruptions in the period of service.

The length of the holiday varies from a few days to a few weeks. It may be the same for the whole staff, if more or less homogeneous, but more usually it is different for various groups : salaried employees, workers, apprentices, adults, young persons, etc. It is often proportionate to length of service. Minimum and maximum figures are generally fixed for its duration.

Many agreements stipulate that the holiday must not be broken up, but must be given all at once. Exceptions are sometimes made to this rule (Sweden, agriculture).

The actual time at which the holiday is to be taken may be left to the employer to decide or may be settled by works agreements or regulations. Some agreements fix a period for holidays — say, between 1 April and 30 September, or during the slack season in seasonal industries.

If the holiday is to have its due social value, the worker must not engage in other work during this rest period ; this is often prohibited in agreements, on pain of withdrawal of the right to a

holiday. It may also be provided that the employer must not commute the holiday for a money payment.

The worker draws his wages during his holiday. Several Netherlands agreements provide for the institution of a fund to which employers and workers pay contributions to provide holiday allowances. Generally, however, the employer remains solely responsible for the payment of wages. As a rule normal wages are paid, less any bonuses or special allowances, such as overtime payments. Workers on piece rates receive their average earnings.

Quite a number of agreements deal with the question of short time. It is sometimes stipulated that the normal wage must be paid even if short time is being worked in the undertaking while the individual in question is on holiday ; on the other hand, he gets less than the full wage if he himself was on short time for a certain period before going on holiday.

Many texts contain special rules governing the case of dismissal before the holiday period. Some state that the worker must take his holiday before leaving and must not be paid compensation unless it is impossible for him to take his holiday. Others provide for compensation in proportion to his length of service during the year in question. If the worker is dismissed for some serious reason, however, he loses his right to a holiday, but the agreements often stipulate that he must be guilty of a serious offence before this measure is applied.

It should also be noted that some agreements make provision for special conciliation committees to deal with disputes concerning holidays (e.g. Great Britain, printing trades agreement of 1930 concerning hours of work and holidays).

Public Holidays

Public holidays are in general fixed by legislation, but collective agreements may stipulate special holidays for a certain industry or district. Thus, 1 May is a public holiday in several countries. It is impossible to study here in detail the number and nature of these holidays, for they vary largely from country to country. They may be general, religious or national festivals, local festivals, commemorative days, etc. With regard to their number, it may be noted that most Australian agreements provide for 6 to 8 general holidays.

In such cases the worker is entitled to a day off ; if he works, he receives the overtime rate of pay specified in the agreement.

When the legislation has no provisions on the subject, collective agreements sometimes regulate the wages to be paid on legal public holidays and other holidays mentioned in the agreements. Obviously, these arrangements affect only workers paid by the day, for persons paid by the week or month will continue to receive their remuneration irrespective of intervening holidays. Many agreements, however, contain no provisions on this point, or even explicitly exclude all payment (e.g. Austria, general agreement for the textile industry, 1934 ; Czechoslovakia : glassworks, paper-works, etc.).

In the Netherlands, compensation for public holidays is paid out of the holiday fund to which reference was already made.

In some industries (e.g. the book trade) or in some countries more generally (e.g. Australia) the payment of wages for public holidays would seem to be the rule. In the case of piece workers, wages may be paid at the hourly rate (gold-mines in Victoria, Australia) or on the basis of the average wage (Czechoslovakia book trade).

CHAPTER IV

INDIVIDUAL RELATIONSHIPS BETWEEN EMPLOYERS AND WORKERS

The following pages deal with the rules for the engagement and dismissal of workers and salaried employees. The reciprocal rights and obligations of the employer and the individual worker will be summarised, in so far as they have not been dealt with above, and the provisions of collective agreements concerning certain special groups of workers will be studied.

Engagement of Workers

This section deals only with the provisions concerning employers and individual workers. Collective problems, such as the organisation of placing and the supply of labour will be discussed later. The successive points to be dealt with are : the person of the employer, the nature and methods of the engagement and the person of the worker.

The texts of agreements, especially those covering large undertakings, may specify the persons responsible for the engagement of staff and the place to which workers in search of employment should apply. Sometimes the staff representatives have to be consulted before a worker is engaged.

In certain cases the agreement must define who is the employer, especially when some intermediary, such as a sub-contractor, comes between the main employer and the worker. Many agreements prohibit sub-contracting (Great Britain, building) ; others permit it on condition that the intermediary accepts the provisions of the collective agreement, or — and this is important in the event of the sub-contractor becoming insolvent — that the principal employer remains jointly responsible towards the worker for the fulfilment of the obligations assumed by the sub-contractor (Germany : various agreements for parquet-making, the engagement of orchestras, etc.).

Many agreements make a distinction between permanent, temporary and casual engagements. The last-mentioned may even be excluded entirely from the scope of the agreements. Several texts limit the number of temporary or casual workers that may be engaged to a certain percentage.

Special rules often govern engagements on probation. The probation period is usually restricted to a certain maximum, varying with the trade or the nature of the job. During the probationary period, the contract of employment can be broken at any time, but occasionally certain restrictions are placed on this right. When the probationary period comes to an end, it is often prescribed that the provisional engagement automatically becomes an ordinary engagement.

When the employment is by nature intermittent, detailed rules may be laid down concerning the order and special methods of engagement, especially for dock workers, for instance.

A certain order of engagement is also sometimes stipulated for the event of an undertaking reopening after a stoppage, so that workers who were formerly employed there are guaranteed priority over others, fathers of families over unmarried men, workers belonging to that trade over those from other occupations, etc.

The agreements may also lay down a certain ratio between different groups of workers — skilled to less skilled, etc. (e.g. London taxi-drivers, South African railwaymen). Other similar rules will be considered later, in connection with the employment of young persons and apprentices, etc.

Some agreements restrict the employment of foreigners by stating that only nationals of the country may be engaged. But these provisions are rare, for the matter is rather one for the legislator. Regulations concerning the employment of women are more frequently met with. A number of texts guarantee equality of treatment for men and women (e g. several French agreements of 1936) ; others again tend to reduce the percentage of women employed. The Italian agreements of 1934 for the relief of unemployment stated that women should be replaced by men and young persons by adults. In so far as women were kept on, their employment was to be limited to functions that are peculiarly suited to them.

In certain occupations the agreements prohibit the employment of women on specified tasks, particularly those that are considered as men's jobs. In the event of a dispute, joint committees are

sometimes required to determine what those tasks are. The same may hold good for the employment of young workers (e.g. in England : national agreement for the boot and shoe industry, January 1935).

In many countries it is customary for the wife of an agricultural worker to be obliged to work also for the employer, and many German collective agreements impose restrictions on this practice. The employer is required, for example, to see that women are not overworked — so that they neglect their household duties — that they are employed on work suited to their capacities, that they are permitted to finish their day's work earlier than the men, etc.

The personal characteristics of the worker, as distinct from the category to which he belongs, are also the subject of stipulations. Very often, his engagement is dependent on his being in good health ; he may have to submit to a medical examination or produce a doctor's certificate. The cost of this may be borne by the employer. According to some agreements, the worker is not obliged to go to the doctor paid by the employer, but may select his own (United States, petroleum industry).

Employees who will have to assume certain financial responsibilities, such as cashiers and managers, must often furnish special guarantees, more especially the deposit of security, before being engaged. Collective agreements often offer these employees certain guarantees. The security they deposit, for instance, may not be used by the employer for his business, but must be deposited with a public office or bank, so that neither the employee nor the employer can touch it independently. The interest that accumulates must go to the employee, to whom the deposit is returned when he leaves the employer's service.

The workers' occupational qualifications are obviously the essential condition for his engagement, and he may therefore, according to the nature of the vacant post, be required to produce diplomas, testimonials or, in the case of skilled workers, proof of having duly completed his apprenticeship.

Some agreements expressly state that occupational ability must be the sole criterion for engagement, which means that the employer may not discriminate arbitrarily ; in fact, this is often stipulated in these terms. The employer may also undertake to re-engage workers dismissed as the result of a strike or lock-out.

More generally, many agreements try to safeguard the workers' freedom of association by stipulating that the employer may not

make the worker's or employee's engagement conditional on his membership or otherwise of a trade union in general or of any specified trade union. Sometimes the workers give a similar undertaking with regard to their employer or their fellow-workers.

On the other hand, it may be stipulated that preference should be given to trade union members (e.g. Sweden, bakeries). In so far as this is the direct consequence of the reciprocal recognition of organisations, the matter will be dealt with in connection with collective relationships. Mention will be made here only of the provisions concerning individual employers. The agreement may merely recommend that preference be given to workers who are trade unionists. The employers may agree to employ trade unionists as far as possible, or to give preference to members of the contracting organisation, or to consult that organisation before taking on workers. Sometimes the employer's obligation is very strict and is supplemented by a corresponding obligation on the worker's part (frequent in the book trade). For the workers, however, the obligation is often more elastic : they undertake not to work for an employer who is not a member of the employers' organisation or who does not comply with the conditions of the collective agreement.

In many countries, such as Australia and the United States, the problem of the closed shop is extremely important. It must suffice here to refer to the solution adopted in the awards of the Australian Federal Arbitration Court. A recent decision (C.A.R. 1932, p. 438) summed up as follows the principles by which the Court is guided :

(1) The Court will not grant preference of employment to members of a union unless a respondent unjustifiably discriminates against them in the engagement or dismissal of employees.
(2) The Court may grant preference when an order is necessary or conducive to industrial peace.
(3) The Court may grant preference for the purpose of aiding the Court by encouraging unionism or preventing injustice to unionists.
(4) The Court will only in case of very strong necessity permit any interference with the employer's discretion in choosing his employees.

Dismissal

The dismissal of workers, like their engagement, may be subject to restrictions laid down in collective agreements. But this is not always the case ; many agreements, on the contrary, leave the employer entirely free to dismiss the worker, and the latter to give up his job ; it may even be stipulated that both parties

are free to withdraw from the contract of employment at any time, on an hour's or a day's notice. The most recent texts would seem to show a desire to make employment more stable. Before the stipulations of collective agreements can be appreciated at their true value, one must compare them with the legislation, which in many countries contains rules governing dismissal. It may be noted, for example, that in France the collective agreement only — as distinct from the individual contract and works regulations — can take the place of custom in the matter of dismissal.

To require that notice be given is the commonest means of restricting the liberty of the parties to terminate contracts of employment. As a rule, the period of notice is the same for the employer as for the workers, but the latter may be given the advantage of longer notice. The period varies from a few days or a week to several months, according to custom, occupation (industry or commerce for example), categories of persons (workers and salaried employees, and also different grades of the latter group) and often also length of service or age. Some groups of workers, however, are usually excluded from this protection — e.g. day labourers, assistant workers, probationers, etc.

When the contract of employment is terminated in a manner contrary to the terms of the collective agreement, damages may be payable. Some few agreements state that if the employer illegally breaks the contract the workers may refuse to continue to work for him after the joint committee has given its decision ; if the worker is guilty of a breach of contract, the other employers, after a similar decision, may be prohibited from giving employment to the worker (Netherlands, printing trade).

In addition to the necessity for notice, it may be stipulated that contracts can be terminated only at certain times, such as pay-day or the end of a week, month or quarter. Often, notification of dismissal has to be given in a prescribed form — for example, in writing or by registered letter — even if no period of notice is required. Some agreements add further restrictions, stipulating that a worker may not be given notice of dismissal while on holiday or absent ill.

Immediate dismissal with the payment of wages for the statutory period of notice is generally considered to be the equivalent of due notice. It may also be provided that a worker who fails to give due notice forfeits his right to wages.

Agreements often expressly confirm the possibility of imme-

diately terminating the contract for valid reasons. The reasons for which a worker may be summarily dismissed may be enumerated — absenteeism and other disciplinary offences are the most common.

The reasons for dismissal may be laid down in general terms in collective agreements. It is sometimes stated, for instance, that the reasons for dismissal must always be given, and that if the employer does not do so the worker is entitled to ask for the reason. A clause of this kind is often found along with other clauses prohibiting dismissal for certain specified motives, the chief of which will be examined below.

The question of freedom of association is very important, as in the matter of engagement. Dismissal on account of membership or otherwise of a union, or of activity as a trade unionist is often forbidden. But employers who have undertaken not to engage non-unionists are always obliged to dismiss any workers who refuse to join any union or a certain specified one.

Many agreements provide that illness for not more than a specified period or an accident to the worker may not be used to justify dismissal. The same may be stipulated concerning a change of ownership of the undertaking. In Italy, the Labour Charter prescribes that such clauses must be included in collective agreements. In a few cases, the agreement contains an exhaustive list of the reasons that justify dismissal.

In order to ensure the observance of these rules, the agreements sometimes grant the worker the right of appeal against dismissal when he considers it unjust, and conciliation or arbitration boards may be set up to settle disputes. For example, the standard agreement between the French National Federation of Distributive Co-operative Societies and the General Confederation of Labour stipulates that the societies must grant the contracting trade union the right to request information concerning the reasons for the dismissal of any of its members, if the member appeals to the union. If the union contests the validity of these reasons, the matter can be submitted to an arbitration board, which determines the compensation due for the injury, if any, done to the worker. In the British tin industry, a worker directly employed in the production process may not be suspended on account of an accident to a machine until he has been allowed to state his case to the management, and he may not be finally dismissed until after his case has been examined by the staff representatives.

It is sometimes laid down (as in the Australian arbitration awards) that dismissal for the obvious purpose of avoiding some obligation, such as the granting of a holiday with pay or the payment of wages for a public holiday, is deemed null and void.

The problem takes on a different aspect when the dismissal affects not one person only but a group of workers or employees, or perhaps the whole staff (the undertaking being closed). Collective agreements sometimes try to mitigate the severity of these measures. The staff representatives may have to be consulted before the decision is taken (Czechoslovakia, potteries), or the matter may be submitted to a conciliation or arbitration board. The agreements sometimes give a definition of collective dismissal on the basis of a certain minimum number of workers dismissed, or a percentage of the number of persons or groups of persons employed in the undertaking or in one department of it. The cases of suspension of work in which the staff representatives are entitled to intervene may also be enumerated.

The order of dismissal may also be prescribed, the employer being bound to take into consideration the length of service, age, family responsibilities and capabilities of the workers. The trade union may be consulted on this point.

There are even agreements prohibiting employers and employees from terminating their contracts of employment at certain times of the year, as is the case in the Netherlands agreements mentioned above.[1]

Dismissal always involves certain obligations on both sides. It is sometimes expressly stated that the worker who is under notice must still work conscientiously. The employer, on his side, must allow the worker enough free time to look for another job or to put in order his tools (it being customary in some trades for the worker to supply his own).

If the employer provides accommodation or a house for the worker, it must be evacuated when the worker leaves his employment, but some agreements allow him a certain period of grace.

The employer must also give the worker a certificate and any other documents that he may require for the purpose of the employment exchange, unemployment insurance, etc.

Finally, the agreements may compel the employer to pay compensation for dismissal. This obligation is sometimes laid

[1] Cf. p. 52.

down by legislation, more especially in the case of salaried employees. The Italian Labour Charter makes it a general rule. In that country, therefore, most collective agreements stipulate that workers must receive compensation for dismissal. The principles on which it is granted are usually the following : the worker must have a certain length of unbroken service to his credit (one year, perhaps) ; no compensation is payable if the worker throws up his job of his own free will or if he is summarily dismissed for some serious motive ; the amount of the compensation varies with length of service, but a minimum and a maximum are regularly fixed. The rates sometimes differ according to the size of the undertaking (the number of workers employed). There are normally special provisions concerning the calculation of length of service, showing what interruptions on account of sickness, accident, lack of work, etc., may be reckoned for this purpose.

The problem of compensation for dismissal has become a matter of great importance in the United States in recent years (e.g. railways).

The Worker's Obligations

The services that the worker must perform under his contract of employment are regulated in various ways by collective agreements. Many of them expressly stipulate that he must perform his work conscientiously to the best of his ability and that he must not engage in other work on his own account or for another employer outside his working hours (especially in the building trade, the book trade, etc.).

Some agreements also state that the employer must employ the worker on tasks suited to his capacities. A clause of this kind is frequent in theatrical agreements. The freedom of the employer to transfer the worker to tasks other than those for which he was engaged is often restricted, but exceptions are always made for cases of *force majeure*, accidents, interruptions in work, or, more generally, with a view to avoiding dismissals when trade is slack. It was already pointed out that workers on piece rates may be employed on other jobs for a certain given time if no piece work is available for them.

On the other hand, strict rules may be laid down concerning the allocation of tasks. Several agreements provide that work normally done by skilled workers must not be entrusted to unskilled men ; others limit the number of machines or appliances that may be placed under the supervision of one worker (e.g. in the

manufacture of iron bedsteads in Great Britain); or again all the work pertaining to a certain grade of the staff must, save in cases of extreme urgency, be performed by workers of that grade (United States, *petroleum industry*).

The workers must not, however, place obstacles in the way of the introduction of new processes; a definite clause to this effect sometimes exists in the agreement. The same applies to new machines, but one English agreement contains a reservation that may be noted: the employer must guarantee that every worker ousted by a machine is given an opportunity of learning how to use that machine (Sheffield, precious metals). Staff or trade union representatives may be required to discuss with the management any new distribution or reorganisation of work or working methods. In any case, a worker who is transferred to some new task must not suffer any loss of wages on account of the change.[1]

Factory discipline was mentioned in connection with the rules for the payment of wages; it may be added here that collective agreements often make it compulsory for the worker to begin and stop work at fixed hours, not to absent himself without permission during working hours, to obey the regulations, etc. It may even be agreed that the workers should, subject to certain conditions, submit to inspection on leaving the factory or workplace. This may be limited to certain circumstances, as when a case of theft has occurred; a shop steward or other staff representative may be required to be present when the inspection is carried out.

In the case of certain categories, more especially salaried employees, the agreements contain rules concerning trade secrets, radius clauses, inventors' and authors' rights, etc. There is no need to enter into the details of these special questions, although they are of great importance, for sometimes there is no legislation on the subject, and the collective agreement is the only safeguard of the workers' rights.

The Employer's Obligations

In addition to the obligation to pay the agreed wage, which is the fundamental one, there are certain subsidiary obligations laid upon the employer by numerous agreements, more especially with regard to factory hygiene, accident prevention and insurance. Here

[1] Cf. above, p. 23.

again, the agreements play a less important part than does the legislation of the country, but they often guarantee the workers more than the legal minimum of protection.

Collective agreements often require the employer to provide certain hygienic facilities or conveniences, such as changing rooms and bathrooms, cloakrooms, bicycle stores, dining rooms, etc. Good ventilation and heating and the regular cleaning of workplaces are often mentioned. In some industries where outside work occurs, particularly in the building trade, shelters must be provided. The employer may also be required to enable the workers to heat their meals ; sometimes canteens have to be set up under the joint management of the workers and the employer.

The workers are often exhorted to give strict obedience to the safety regulations and to inform the employer or his representative of any defect in materials, plant or machinery. The employer, on the other hand, sometimes expressly undertakes to have all the necessary inspections made, with the collaboration of staff representatives, to provide the workers with the necessary protection, etc. A well-equipped first-aid staff, or at least the essential materials, must be available for cases of illness or injury ; medical attention may even be guaranteed to sick or injured workmen (Swedish metal industries).

Quite apart from his legal obligations, the employer may, in virtue of a collective agreement, be bound to insure his staff or to insure certain groups of workers who run greater occupational risks or who are not covered by compulsory insurance. Special compensation may be guaranteed to persons who are employed in places where they are specially exposed to disease — e.g. malaria (in several Italian agreements).

If a worker dies, many agreements make the employer responsible for the payment of compensation to his survivors ; the amount may be fixed at several weeks' or months' wages, generally varying with length of service. This right is often conditional on the worker having a certain minimum length of service to his credit.

Special Categories of Workers

Reference has already been made several times to various special groups of workers, such as women, young persons, workers who are partially incapacitated, etc. There remain two groups to be considered : home workers and apprentices.

Home Workers

There is no need to deal here with the special collective agreements or regulations governing the conditions of home work in various industries. It will suffice to study the general agreements that contain clauses concerning home work ; these are quite common in certain industries in which home work exists side by side with work in factories or workrooms (e.g. the clothing industry ; cf. agreements concluded in France during the summer of 1936).

Some agreements prohibit home work entirely. Others forbid factory workers to accept home work ; yet others specify certain tasks that must not be performed outside the factory (e.g. the manufacture of travel goods in the leather industry, etc.). There are sometimes clauses laying down a minimum age for home workers. Some agreements, again, simply recommend that the employer should avoid as far as possible giving out work to be done at home.

Then there are agreements that permit home work subject to reservations. It is often stipulated that the conditions of employment of home workers must not be less favourable than conditions of work in general. Some agreements state that home workers are entitled to the same advantages as factory workers (e.g. the supply of equipment, tools, etc.), that they must have an annual holiday, that they must be covered by insurance, that the scope of activity of conciliation boards must extend to them, and so on ; they are sometimes even entitled to a special allowance or a bonus on output (Netherlands, ready-made clothing trade).

Apprentices

In some industries, the regulation of apprenticeship and of the conditions of work of apprentices is of great importance not only for the apprentices themselves but also for the other workers. The agreements for the textile industry, for example, contain scarcely any provisions on this subject, whereas it is regulated, sometimes in great detail, in the book trade, building and other industries in which a thorough knowledge of the work is necessary before the worker can reach his full output. There are, indeed, often special agreements for apprentices. Here again, of course, the collective agreement merely fills the gaps left by the legislation. Two types of provisions may be distinguished : those limiting apprenticeship and those regulating it.

Among the restrictive measures, the following may be noted.

It may be stipulated that only employers of recognised status in their occupation are allowed to employ apprentices and that permission may be withdrawn from those who do not give their apprentices adequate training or who fail to observe any other clauses of the collective agreement.

The employment of apprentices may be prohibited in certain occupations (highly mechanised or dangerous work) ; sometimes they are warned against entering occupations offering no future (Great Britain : agreement between the society of British Gas Industries and the Amalgamated Union of Building Trade Workers).

Many agreements specify the maximum ratio of apprentices to other workers, which may vary with the size of the undertaking ; a detailed scale is sometimes laid down. In other cases, the number of apprentices is not limited, but the trade unions are empowered to discuss with the employers the percentage of apprentices that may be employed in a given area. Exceptions may be permitted for undertakings with a special department for apprenticeship (e.g. in the heavy metal trade). In order to prevent evasion of the restrictive clauses, the agreements often prohibit the engagement of unpaid workers, probationers, etc., or place these persons on the same footing as apprentices.

The agreements usually prescribe that the apprentice must produce a medical certificate, must have an adequate school education for his trade, possess personal aptitude for it and be within certain age limits.

There are quite often provisions concerning the vocational training of apprentices. The parties sometimes expressly undertake to do all they can to train the apprentice. Often formal articles of apprenticeship must be signed, and sometimes a standard form of contract is appended to the agreement. Many texts specify the duration of apprenticeship, prescribe the course of training to be followed during the different years and the examinations to be taken, and appoint joint committees to supervise the apprentices and set their examinations.

The conditions of work of apprentices may be included in the general regulations or laid down separately. In the former case, the apprentices are automatically assimilated to the workers covered by the agreement, and this is sometimes expressly stipulated. Many agreements contain special provisions, more especially concerning remuneration. In some cases this matter is left to the organisations concerned or even to the articles of apprenticeship.

In some industries the employment of apprentices on piece work is restricted, and it is often stipulated that an apprentice must not be attached to a worker on piece rates. Precautions are frequently taken to prevent the apprentice from being exploited by the worker in whose charge he is placed, and the number of apprentices attached to one worker may be limited on this account. It may also be stipulated that the apprentice is directly responsible to the employer.

Many agreements contain special rules concerning apprentices' holidays with pay ; others limit overtime for them, make provision for attendance at vocational schools, etc.

The first months of apprenticeship are generally considered as a probationary period during which the contract can be broken if the apprentice shows no aptitude for the trade. There are sometimes special rules governing the interruption of apprenticeship or the transfer of the apprentice when the undertaking is closed down.

When apprenticeship is complete the employer must give the young worker a certificate, and the worker may be obliged to pass an examination.

CHAPTER V

COLLECTIVE INDUSTRIAL RELATIONS

The following pages deal with the mutual relations between the parties in so far as they are governed by the collective agreement. For obvious reasons, this survey will be limited to collective agreements in the strict sense. The legislative aspect of the problem will be touched upon later.

Mutual Recognition of Organisations

The reciprocal recognition of organisations is a necessary preliminary to the regulation of collective labour relationships, and the fact of an agreement being concluded implies such recognition. But many agreements contain a formal declaration of recognition, especially when the agreement is intended to terminate a period of conflict and inaugurate an era of collaboration, e.g. Luxemburg (metal industry and iron mines, agreements of 1936). The scope of such a declaration may vary, being either limited to the effects of the agreement or in the nature of a general principle that will serve as a basis for future collective negotiations or possibly even for legislation. Mention may be made of the basic agreements concluded in Denmark, in Sweden, and more recently also in Norway (agreement of 9 March 1935), in France (agreement of 7 June 1936) and in Belgium (agreement of principle of 17 June 1936).[1]

The practical application of the principle of recognition through the collective agreement has several aspects :

1. The creation of joint institutions on an occupational basis ;
2. The adoption of measures to secure the enforcement of the collective agreement ;
3. The appointment of joint bodies for the renewal or amendment of existing agreements and the conclusion of new ones.

[1] Cf. below, pp. 83 *et seq.*

Some of these provisions are to be met with in a large number of agreements that have reached a certain stage of development, but it is only in the agreements for highly organised industries that they exist as a systematic whole.

Institutions on an Occupational Basis

Mutual Benefit Funds

The organisations that are parties to a collective agreement often set up joint funds for making certain payments to workers that the individual employers do not guarantee. Mention has already been made of funds for family allowances [1] and for holiday allowances, [2] but there are many other purposes, more especially welfare work and insurance, for which funds may be set up by collective agreements. There are, for example, sickness, invalidity and widows' and orphans' funds (in several Italian agreements), pension funds (in many agreements concerning salaried employees), unemployment funds (United States : hosiery agreement of 1930) and a variety of more general funds for payments of different kinds to the workers (e.g. in German chemists' shops).

Very often the general agreement lays down the principle and defines the purpose of the institution, the beneficiaries and how the cost is to be shared ; special agreements are then drawn up to regulate the details of the structure and working of the fund. Provision is always made for some supervisory body.

Organisation of Placing

The principle of mutual recognition may be restricted so as to exclude trade union intervention in the engagement of workers. On the other hand, it may lead to the organisation of placing, in so far as this task is not regulated by legislation.

Some agreements make it compulsory for the employers to apply to employment agencies run by the trade unions. But it is usually stipulated that if no suitable worker is forthcoming within a given period, the obligation lapses (e.g. in many theatrical agreements) ; the trade union, on the other hand, may have to guarantee to provide the necessary supply of skilled workers.

More frequently the agreements set up joint employment

[1] Cf. above, p. 17.
[2] Cf. above, p. 45.

agencies, or agencies working under joint management, to which the employers are obliged to apply for labour and the workers for employment. Both parties contribute to the expenses of the agency and supervise its working either directly or through another joint body, such as an arbitration committee.

The agreements often contain detailed rules for the organisation and working of these agencies ; in other cases they leave the agencies to draw up their own rules. It is impossible in the present study to go into technical details, but mention may be made of the provisions for ensuring impartiality in the work of the agency, such as the stipulation that in the event of a strike or a lock-out the agency should suspend all its activities as far as persons involved in the dispute are concerned.

Enforcement of the Agreement

There are two main types of measures for ensuring the proper working of the agreement : those for securing compliance and those for settling disputes.

Securing Compliance with the Agreement

The agreement sometimes expressly states, especially if there is no legislation on the point, that its clauses automatically become part of the individual contracts of employment. It may be provided, for example, that in every undertaking a copy of the agreement must be inserted in an employment book signed by the employer or his representative and the worker (Great Britain : steel industry in South Wales and Monmouthshire).

The parties sometimes undertake to do what they can to ensure observance of the agreement by their members ; they may also guarantee specific action, such as the withdrawal of financial assistance from refractory members (Great Britain : quarries in Aberdeen).

Many texts prescribe that no individual agreements contrary to the collective agreement may be entered into, or that any clause by which a worker renounces, for the future or even for the past, his claim to any right or benefit accruing from the agreement is null and void.

Exceptions may be made, however, provided that the consent of the works committee or a joint committee be obtained.

Provision may be made for measures to give effect to certain clauses of the agreement. Committees may be set up, as has been

mentioned at various times, to classify undertakings, workers or areas, to fix piece rates, to discuss new methods of work or remuneration, to deal with apprenticeship, etc. Special mention may be made of the mixed committees set up to follow economic developments, so as to adapt wages and other conditions to changed circumstances (e.g. United States : national agreement for the hosiery industry).[1]

Supervisory bodies may be appointed to check the methods of calculation and the payment of wages and the due observance of daily hours and other working conditions. Many agreements permit the representatives of the trade unions to inspect factories and workplaces. Joint committees are often set up for this purpose, and their delegates make the necessary investigations. The employers must allow them free access, and they must, in return, refrain from interfering with the working of the undertaking. All these tasks may be entrusted to a single body — the conciliation committee.

Again, provision may be made for special representation of the staff by means of shop stewards or works committees. These may be appointed for a specified purpose, such as to check the quantity and quality of the product (in mines), to collaborate with the management in accident prevention and the maintenance of hygienic conditions in the undertaking, to assist the factory inspectors, etc.

According to other agreements, the staff representatives have extensive powers. In such cases, a distinction must be made between countries that have legislation on the subject of works committees, works councils, confidential councils or the like, and those which have no such legislation. In the former (such as Austria, Czechoslovakia, Germany — before 1933 — Luxemburg, Norway and the U.S.S.R.), the collective agreements often contain provisions concerning the organisation and working of these bodies, but their scope is obviously limited by the legislation, to which indeed the agreements sometimes simply refer. They may give the committees some additional tasks (e.g. fixing piece rates) or define the details of their competence in respect of a particular industry or occupation (e.g. as conciliation bodies in the event of a dispute between workers and employer or between workers), or again make provision for the event of no committee being set up under the legislation. Thus, in Czechoslovakia several agreements

[1] Cf. also above p. 26.

state that shop stewards will be appointed, and it is sometimes stipulated that they cannot take up their duties without the employer's consent (Förster piano factory).

In other countries the collective agreements themselves provide for the appointment of staff representatives and define their powers. There are, for example, the collective agreements in the British mechanical engineering and carriage-building industries, which make provision for shop stewards and shop committees or the " Tillidsmaend " in Denmark. Sometimes only one person is appointed for an undertaking or workshop: sometimes there are several, the number varying with the size of the staff. They may be freely elected by the staff or by those of the staff who belong to the contracting union, or they may be appointed by the unions concerned.

In France, the collective agreements concluded in accordance with the Act of 24 June 1936 must make provision, and do in fact provide, for the appointment of representatives elected by the staff in undertakings employing more than 10 persons.

The staff representatives may form a joint works committee with representatives of the employer. In this case, some English agreements stipulate that the delegates must be trade union members. Shop committees may also be appointed by a central joint committee (in the house-painting trade in the Netherlands).

These bodies have generally a variety of functions in addition to supervising the enforcement of the collective agreement. They are the spokesmen of the staff in dealing with the employer, and therefore many agreements make conciliation one of their main functions.

Settlement of Disputes

Although the collective agreement is an instrument intended to prevent the occurrence of industrial disputes, its application may give rise to them. Naturally, therefore, most of the texts make provision for the settlement of any disputes arising out of their application. Sometimes there is merely a general statement to the effect that the organisations should strive to reach an amicable settlement in the event of any difference of opinion. More frequently, provision is made for submitting any dispute to a joint committee, which may have powers of conciliation only or may be permitted to arbitrate.

The important agreements covering great industries or the whole of a country very often go further, laying down details of the

conciliation or arbitration procedure. The structure of the system varies from industry to industry and from country to country; it must suffice, therefore, to give a general survey of the main points common to the majority of agreements.

When a worker has a complaint to make concerning his employers, he must first of all appeal to his immediate superior. In doing so, he may claim the assistance of a staff or trade union representative, where such exist. Some agreements state that he may appeal directly to the staff representatives. They must try to settle the matter with the employer; they may, either after an ineffectual attempt at conciliation or, under some agreements, directly apply to the trade union, which endeavours to settle the question through its local delegation or its representative in the undertaking.

If these attempts fail or if the parties are not satisfied with the results, the dispute may be submitted to a joint conciliation board or to a conference of organisations. The agreement may provide for a single instance or for several. Distinctions may also be made between individual and collective disputes, between subsidiary questions and those of general interest. When a succession of instances is set up, the question first comes before the local committee or conference, then before the district body and finally before a central body. Frequently the joint bodies are competent to deal with disputes of all kinds, but all questions of general interest or directly affecting the organisations are submitted directly to the higher bodies.

Provision may be made for special conciliation boards to deal with specified cases, such as the settlement of disputes concerning piece rates, dismissal or other questions to which reference has already been made at various points throughout this survey.

The conciliation procedure may be combined with or supplemented by arbitration possibilities. Some agreements stipulate that the final ruling will be given by a special arbitration board or by the central joint committee; others permit the parties to appeal to a neutral party, such as the chairman of an arbitration board or the Minister of Labour.

The agreements often contain rules for the conciliation and arbitration procedure, but they may also leave the details to be settled by the organisations. Generally speaking, the bodies responsible for settling disputes have power to hear the evidence of the parties and of witnesses, to send delegates to investigate on the spot, to make such investigations directly, to inspect work-

places, see conditions of employment, etc. In order to speed up the procedure it may be stipulated that the parties and the conciliation or arbitration bodies must observe certain time-limits. A worker, for example, may be obliged to submit any claims or complaints within, say, 4 or 6 weeks, on pain of losing his rights.

Collective Bargaining

All the measures studied above are concerned with the enforcement of agreements ; they therefore presuppose the existence of an agreement. But the most serious disputes usually arise over the renewal or alteration of an agreement or the conclusion of a new one. It is obvious that only a limited number of agreements can contain provisions concerning the procedure for drawing up new collective rules. National agreements may constitute a basis for district, local or works agreements ; covering agreements laying down general working conditions may prescribe a procedure for fixing wages and hours of work ; a general agreement between large organisations of employers and employed, or even long established custom confirmed by agreement, may create machinery for collective collaboration.

The powers of the bodies thus set up vary greatly. Some agreements appoint a central body *(Tarifamt)* to which the contracting parties may submit any request for a change ; the central body does all the preparatory work for the amendment. Very often it cannot do more than this, but even if it can make proposals for revision, the final decision often lies with the contracting organisations.

Joint committees may be given the task of settling working conditions for a whole industry. Their powers may, however, be limited to the fixing of wages and hours of work, as is the case with the British joint boards and the bodies set up under a covering agreement. The competence of such bodies is limited in area, as their decisions apply in the main only to the districts or localities for which they were set up. Covering agreements often make provision for the intervention of other bodies if the regional or local committees fail to agree. District joint committees and national boards may be set up for this purpose : the former normally act as conciliation bodies, whereas the second have power to arbitrate.

A collective agreement may also appoint a joint council to regulate working conditions in industry in an entirely independent

manner (Great Britain : building, railways, mercantile marine ; Japan : mercantile marine). In this case the general agreement deals simply with the organisation and working of the council, which, in the exercise of its functions, determines the rules governing working conditions ; these are then incorporated as adopted in the new, amended or revised agreement.

If the structure of the industry so requires, this central body may form sub-committees to deal with various occupational groups, categories of staff or industrial areas. The different bodies may be graded and a right of appeal from a lower to a higher instance permitted. At the same time, the decisions of the council may not take effect unless ratified by the organisations concerned.

Some industries, especially in the Central European countries, have a system of collective collaboration analogous to that of industrial councils. With a view to developing the industry, safeguarding industrial peace by the adoption and maintenance of collective agreements and regulating all matters concerning labour relationships, a joint body *(Tarifgemeinschaft)* may be instituted by collective agreement, comprising all the employers' and workers' organisations that are parties to the agreement. An effort is thus made to co-ordinate the work of all the joint bodies set up to fix wages, to regulate placing and apprenticeship, to act as conciliation and arbitration boards, to supervise and revise the agreed rules, etc. A hierarchy is established among those bodies, their respective powers are defined, and a central board is appointed to co-ordinate and control collective relationships (collective agreements in the book trade in Austria, Czechoslovakia and Switzerland ; the first agreement of this kind was concluded by the German printers in 1896). This joint body must often represent the trade as a whole, defend its interests and see that persons not belonging to the organisations do not work under less favourable conditions than members ; for this purpose it may bring pressure to bear on outsiders (black-listing them, for instance). In this way it may come to keep a check on competitive conditions, more especially on prices (in the book trade in Austria, Czechoslovakia and Switzerland).

The effectiveness of the measures laid down in the agreement is often guaranteed by a solemn declaration made by the contracting organisations that they will not have recourse to strikes or lock-outs while the agreement is in force. This obligation may also be laid down in a narrower form : the parties undertake to abstain from any collective action for amending the terms of the agreement

so long as the prescribed conciliation or arbitration procedure is being applied. In order to enforce this, it may be stipulated that the conciliation or arbitration procedure cannot be applied so long as a strike or lock-out exists.

Some agreements make provisions for a guarantee fund, to which both the contracting organisations subscribe ; it is used to pay compensation to either party for breach of the agreement by the other.

PART II

THE LEGISLATION CONCERNING COLLECTIVE AGREEMENTS

Introduction

The preceding survey shows that collective agreements — concurrently with, but independently of, labour legislation in the strict sense — constitute one of the main pillars of the worker's rights, not only in respect of such matters as hours of work, holidays with pay, works regulations, etc., which may often be regulated by statute, but also and pre-eminently in respect of matters, such as wages, that are not by nature susceptible of uniform, general regulation by law.

But the regulation of labour conditions and of wages is such an important factor in the worker's well-being that it might almost be suggested that social legislation in its various forms — protective labour legislation, special insurance laws, etc. — merely provide the framework within which collective relationships have to be organised, leaving the system of collective regulation to build up the solid structure round this framework.

Therein lies the originality and importance of the part taken by collective agreements within the system of labour law.

I. — *Historical Development of Legislation*

In seeking to determine the line taken by legislation in this matter, there is no need to relate the history of collective bargaining from the point of view of legislative measures, for that history is to a large extent that of the trade unions — a subject

that has already been dealt with in the volumes concerning freedom of association.[1] It will suffice to indicate the main stages in the legislative development and then to give an outline of the plan to be followed in this study of the existing regulations.

Prohibition of collective agreements. — During the nineteenth century, the development of collective agreements proceeded, as a rule, outside the law. The reason for this was that the fixing of working conditions, and more especially of wages, seemed destined to escape from the control of the law and to be left entirely to competition, that is to bargaining and contract. But the only form of contract recognised by ordinary law was the individual contract of employment or contract for the hire of services. It was also the only form permitted by law, for the prohibition of combination made any attempt at collective regulation illegal.

But — and this point will be elaborated in the third part of the Report — economic developments inevitably made labour relationships collective in character. As a corollary, collective agreements came in practice, and equally inevitably, to supplement if not actually to supersede individual contracts of employment.

Indirect regulation of collective agreements. — The first step taken by the legislator was to remove the legal obstacles that impeded the free development of collective agreements. The next was to promote the movement by a number of indirect measures that need only be enumerated here, for they have already been dealt with in numerous detailed studies by the International Labour Office. They will, moreover, have to be mentioned again later, for they are closely linked up with the regulation of collective agreements.

The first of these measures, which was the removal of legal obstacles to the right to combine and to strike, usually supplemented by the recognition of trade unions, was intended to re-establish on the labour market that equality between the parties that had been destroyed by economic developments and to ensure, as far as possible, fair play in the relations between employers and workers.

When this had been done, the necessary legal and material

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Freedom of Association.* Studies and Reports, Series A (Industrial Relations), Nos. 28, 29, 30, 31 and 32.

basis existed for the normal growth of collective agreements, and in most countries the system is still built up on the trade unions.

The second measure, which was the institution of conciliation and arbitration bodies [1], was intended to provide the parties with a procedure for collective bargaining that was calculated to facilitate the conclusion of agreements and the settlement of disputes arising from this source.

The dual part played by conciliation and arbitration — in the conclusion and in the enforcement of collective agreements — will be studied later.

The third measure was the introduction of minimum wage-fixing machinery.[2] Its main purpose was to provide for the compulsory regulation of wages in industries and occupations with no trade union organisation and therefore beyond the reach of the collective system of regulation. The measure thereby tended to strengthen the power of the trade unions to conclude agreements in other industries.

Reference will be made later to schemes for the actual fixing of wages throughout all industries ; these take the place of the collective regulation of working conditions.

Even social insurance schemes may be classed among the forms of direct intervention — more especially unemployment insurance, which guarantees to the workers, in all circumstances, a certain minimum of social security and thereby mitigates the effects of the competition of unemployed persons on the labour market.

The legislation concerning collective agreements. — With the aid of all these indirect guarantees — at least in countries, such as Great Britain, where they all actually existed — collective agreements were able, in the absence of any direct system of regulation, to develop normally and even to make great strides.

Indeed, certain countries gave preference for a long time to the method of voluntary regulation, believing that freely concluded agreements, in which the responsibilities of the parties were

[1] Cf INTERNATIONAL LABOUR OFFICE : *Conciliation and Arbitration in Industrial Disputes.* Studies and Reports, Series A (Industrial Relations), No. 34.

[2] Cf. INTERNATIONAL LABOUR OFFICE : *Minimum Wage Fixing Machinery.* Studies and Reports, Series D (Wages and Hours of Work), No. 17.

The reader is also referred to the Draft Convention and Draft Recommendation concerning Minimum Wage-fixing Machinery adopted at the Eleventh Session of the International Labour Conference, Geneva, 1928.

directly engaged, would take fuller account than could legally sanctioned agreements of the interests of all the parties concerned and could be more easily adapted to changing conditions in industry.

On the other hand, the absence of legislation involves a number of grave social and economic risks, not only for the parties concerned but also for the country as a whole.

The social risk lies in the fact that the application of these purely *de facto* agreements, which ordinary law does not regulate or enforce by penalties or guarantee in any way, is left entirely to the good-will of the parties, and any dispute that may arise concerning their conclusion, interpretation or renewal must necessarily, failing an agreement, be settled by means of a strike or lock-out.

The economic risk is that the lack of any or of an adequate collective system of regulation of working conditions means constant disturbances in the equilibrium of the economic system. This risk becomes much greater in periods of depression and widespread unemployment, when the normal weapons of the trade unions are sometimes too weak to prevent an excessive drop in wages and in purchasing power. This is one of the main causes of economic disorganisation.

In order to meet these risks, the legislator in practically every industrial country eventually intervened and regulated both the methods of concluding collective agreements and their legal effects.

II. — *Plan of Study*

In conformity with the dual nature of collective agreements as instruments both for fixing working conditions and for securing observance of these conditions, this study will be divided into two sections, the first dealing with the various means of drawing up agreements, and the second with their legal effects.

Methods of drawing up collective agreements. — The legislation concerning the methods of concluding agreements is very varied in character, but there are three main types, determined by the aim in view :

1. Regulation of working conditions on the basis of independent trade unions or occupational groups.

The legislation, which is intended to prevent the disadvantages inherent in the instability of collective agreements, lays down rules for their conclusion but leaves the parties free to decide their contents.

The first chapter will deal with trade unions as a basis for a system of collective agreements. But as the Office, as was mentioned, has carefully analysed trade unionism in its studies on freedom of association, showing the conditions to be complied with by the unions in various countries before they are legally recognised and entitled to conclude collective agreements, it will suffice here to mention the legislative measures taken either to guarantee the right of the unions to conclude such agreements or to extend the scope of these agreements to as many workers as possible.

The second chapter will analyse the methods of concluding agreements on the wider basis of the occupation.

2. Regulation of working conditions by compulsory arbitration.

The purpose of the legislator is, on the one hand, to avoid the dangers of collective labour disputes and, on the other, to maintain the standard of living of the workers ; he therefore enforces State arbitration on the parties, and this naturally involves the fixing of working conditions in the light of essentially social considerations.

Here again it is unnecessary to repeat the study of conciliation and arbitration systems ; all that is required is to bring out the criteria governing the fixing of collective labour conditions by compulsory arbitration.

3. Regulation of working conditions in the light of economic conditions.

In this case the legislation takes account of the interdependence of social and economic conditions and is intended to maintain social and economic equilibrium by influencing simultaneously the labour market and the commodity market.

As this system falls outside the scope of a legal study of collective agreements, it will be dealt with in a special section.[1]

The legal effects of collective agreements. — The second part will deal successively with :

[1] Cf. below : " The Place of Collective Agreements in the Economic Structure of the Community ".

(1) The conditions of validity of collective agreements ; (2) the legal nature and scope of collective agreements ; (3) the contents of collective agreements ; (4) the scope of collective agreements as regards time, area, occupations and persons — more especially, their application to third parties ; (5) the enforcement of collective agreements, the responsibilities arising out of them and the penalties attached to them.

In accordance with the purpose of this Report, which is intended simply as a basis for the general discussion of the problem of collective agreements by the International Labour Conference, this analysis of the legislation concerning collective agreements will aim merely at bringing out the main problems with which the legislator has had to deal and the solutions that have been adopted.

References will constantly be given to the legislation itself, and quotations from it will be given only in exceptional cases and for purposes of illustration.

A. — *METHODS OF DRAWING UP COLLECTIVE AGREEMENTS*

CHAPTER I

TRADE UNIONS AS A BASIS FOR A SYSTEM OF COLLECTIVE AGREEMENTS

By definition, collective agreements presuppose a collective body as contracting party, at least on the workers' side, for all the national regulations permit the individual employer to conclude such agreements. The extent to which the right to be a party to collective agreements is granted is obviously of fundamental importance, for the effectiveness, scope, duration, stability and above all the substance of collective agreements depends mainly on the power of the contracting organisations, the discipline they can exercise over their members and the extent of their sphere of influence.

I. — Occupational Groups as Contracting Parties

Some laws concerning collective agreements, such as the *Swiss* Federal Code of Contract of 1911 (sections 322 and 323), the *French* Collective Agreements Act of 25 March 1919 (sections 31 and 32),[1] the *Rumanian* Contracts of Employment Act of 28 March 1929 (sections 101-104)[2] and the *Brazilian* Act of 23 August 1932

[1] Cf. *Legislative Series*, 1919, Fr. 1. It will be remembered that this Act underwent fundamental changes in consequence of the Collective Agreements Act of 24 June 1936. As the principal provisions of the new regulations will be analysed later, it will be sufficient to note here that while the coming into operation of the new Act did not lead to the explicit repeal of the provisions of the Act of 25 March 1919 concerning the power of casual groups to conclude collective agreements, yet these have in fact become inoperative. (See below, pp. 85 *et seq.*).

[2] Cf. *Legislative Series*, 1929, Rum. 2

(section 1),[1] confer the right of concluding collective agreements on groups of workers as well as on trade unions.

The aim of the legislator in thus putting casual groups — usually strike committees — on a footing of equality with trade unions was, in the first place, to depart as little as possible from the ordinary law of contract, which grants no privilege in the conclusion of contracts to any given organisation, and, in the second place, to facilitate the conclusion of collective agreements even in industries and occupations in which no trade unions had been set up.

But this type of agreement is relatively unimportant in practice, for it has proved extremely difficult to conclude and also to enforce agreements based on mere occupational groups. With regard to conclusion, these groups obviously have no legal personality, and they must therefore receive special authority from all the workers concerned whenever a legally valid agreement is to be drawn up.[2] From the point of view of application, such ephemeral groups, usually possessing no officers and no rules, are not in a position to assume the obligations devolving on them under collective agreements or, which is more serious, to enforce respect of these obligations upon the group.

For this reason the great majority of laws base the system of collective agreements solely on the trade unions, which have, moreover, historical warrant for assuming this rôle.

II. — Trade Unions as Contracting Parties

There are two groups of laws to be considered :

(1) Those that reserve the right to conclude collective agreements to recognised incorporated trade unions, as in *Australia*,[3] *Austria*,[4] *Bulgaria* (Legislative Decree of 22 September 1936 on collective agreements), *Chile*,[5] *China* (Act of 28 October 1931 on collective agreements), *Finland*,[6] *Greece*, cf. Legislative Series,

[1] Cf. *Legislative Series*, 1932, Braz. 6.

[2] Some laws (sec. 31 *(b)* of the French Act, secs. 102-104 of the Rus Act, and sec. 1 (2) of the Brazilian Act) have tried to get over this difficulty by substituting for the procedure of receiving authority in accordance with ordinary law the simpler procedure of subsequent ratification of the agreement entered into by the group.

[3] Cf. *Legislative Series*, 1928, Austral. 2, sec. 73.

[4] Cf. *Legislative Series*, 1934, Aus. 2, sec. 9.

[5] Cf. *Legislative Series*, 1931, Chile 1, sec. 17.

[6] Cf. *Legislative Series*, 1924, Fin. 2, sec. 1.

1935, Gr. 7, *Italy*,[1] *Netherlands*,[2] *New Zealand*,[3] *Poland*, *Portugal*,[4] *Spain*,[5] *Union of South Africa*,[6] *U.S.S.R.*,[7] *Venezuela* (Labour Law of 16 July 1936), and *Yugoslavia*[8];

(2) Those that confer this right on all trade unions, as in *Austria* (former system),[9] *Canada*,[10] *Czechoslovakia*, *Denmark*, *Germany* (former system),[11] *Great Britain*,[12] *Irish Free State* (Act of 14 February 1936 on conditions of employment), *Latvia*,[13] *Mexico*,[14] *Norway*,[15] *Sweden*[16] and the *United States*.[17]

The recognition of trade unions, subject to certain formal and fundamental conditions that were analysed by the Office in its studies on freedom of association, is intended, on the one hand, to provide a legal basis for the right of trade unions to conclude collective agreements and to take action at law to secure their enforcement, and, on the other hand, to define the obligations of the trade unions under these same agreements.

But this distinction has lost its force since the legislation on collective agreements may — and actually does — endow trade unions existing under ordinary law with the same privileges as recognised unions and may impose the same obligations on them.

From the practical point of view, more importance must be attached to the measures taken to enable the trade unions to be parties to collective agreements for the furtherance of their members' interests. These measures serve a dual purpose : (1) to guarantee the right of trade unions and trade unionists to enter into contracts, and (2) to strengthen the bargaining power of the unions by regulating inter-union competition on the labour market.

Protecting the Right of Contract of the Unions

In order to protect trade unions in the exercise of their right to conclude collective agreements, most laws prohibit any measures

[1] Cf. *Legislative Series*, 1926, It. 2, sec. 10.
[2] Cf. *Legislative Series*, 1927. Neth. 2, sec. 1.
[3] Cf. *Legislative Series*, 1925, N.Z. 1, sec. 28.
[4] Cf. *Legislative Series*, 1933, Port. 5.
[5] Cf. *Legislative Series*, 1931, Sp. 14, sec. 12 (1) and (2).
[6] Cf. *Legislative Series*, 1930, S.A. 3, sec. 2 (1).
[7] Cf. *Legislative Series*, 1923, Russ. 1, sec. 15.
[8] Cf. *Legislative Series*, 1931, Yug. 4, sec. 209.
[9] Cf. *Legislative Series*, 1920, Aus. 22, sec. 11 (2).
[10] Cf. *Legislative Series*, 1934, Can. 5 (Quebec), secs. 1 and 2 (1).
[11] Cf. *Legislative Series*, 1929, Ger. 2, sec. 1.
[12] Cf. *Legislative Series*, 1934, G.B. 7, sec. 1.
[13] Cf. *Legislative Series*, 1927, Lat. 3, sec. 1.
[14] Cf. *Legislative Series*, 1931, Mex. 1, sec. 42.
[15] Cf. *Legislative Series*, 1927, Nor. 1, secs. 2, 3, *et seq.*
[16] Cf. *Legislative Series*, 1928, Swe. 2, sec. 1.
[17] Cf. *Legislative Series*, 1933, U.S.A. 2, sec. 7 *(a)* and 1935, U.S.A. 1.

calculated to prevent the conclusion of agreements or to interfere with their stability or continuation when concluded.

(a) *Prohibition of non-union agreements.* — Measures to prevent the conclusion of collective agreements generally take the form of non-union agreements. This practice consists in the insertion of a clause in a contract of employment whereby the engagement or retention of the worker is made dependent on his formally undertaking not to become, or to cease being, a member of a trade union, which may or may not be a party to a collective agreement.

This form of contract is little known in the industrial countries of Europe, for even when no legislation exists on the subject, a contract discriminating against trade unions would be considered contrary to public policy and *contra bonos mores* in every country that legally recognises the right of combination ; but in the *United States* it has played an important part in industrial relations. Until quite recently, the non-union agreement was not only legally recognised but was even enforced at law by means of injunctions, in the same way as property rights.[1]

Moreover, Federal legislation and the laws of certain of the States that prohibited discrimination of this kind against trade unions were invalidated as being contrary to the Federal Constitution or to the constitutions of the various States.[2]

This state of affairs, which threatened to paralyse the progress of collective agreements in numerous industries and occupations, was dealt with in recent regulations (forming part of a group of reforms that will be discussed later) which may be briefly outlined here, because of the important principle it enshrines.

First of all, section 3 of the Industrial Disputes Act of 23 March 1932 [3] — which was held by the Supreme Court to be constitutional [4] — declared non-union contracts to be contrary to public policy and therefore of no legal validity.

Then came the Act of 20 May 1934,[5] amending the Railway Labor Act of 1926, section 2 (5) of which not only prohibited

[1] Cf. *International Labour Review*, Vol XXI, No. 3, March 1930, pp. 315 *et seq* · " Injunctions in Labour Disputes in the United States ", by Dr. Edwin E. WITTE.

[2] *Ibid*., Vol. XIV, Nos. 5 and 6, Nov.-Dec. 1926 : " The Constitutionality of Labour Legislation in the United States ", by William Gorham RICE, Jr.

[3] Cf. *Legislative Series*, 1932, U.S.A. 2.

[4] *International Survey of Legal Decisions on Labour Law*, 1934, United States, No. 8, third case.

[5] Cf. *Legislative Series*, 1934, U.S A. 1.

non-union clauses for the future but also annulled retroactively all clauses of this kind that had been included in agreements.

A further measure was section 7 *(a)* (2) of the National Industrial Recovery Act of 16 June 1933,[1] which prescribed that every code of fair competition must contain a clause to the effect that no employee and no one seeking employment should be required as a condition of employment to join any company union or to refrain from joining, organising or assisting a labour organisation of his own choosing. This provision is mentioned merely as a matter of historical interest, for it was annulled in consequence of the order of the Supreme Court of 27 May,[2] which held the Act of 16 June to be invalid.

Finally, The National Labor Relations Act of 5 July 1935 [3] (Wagner Connery Act) prohibits, among other " unfair labor practices ", any action taken by the employer " by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization ".

But this Act also authorises the parties to collective agreements to agree to a clause requiring membership of a labour organisation as a condition of employment. Thus, although non-union clauses are prohibited, the parties to a collective agreement may lawfully agree to a clause requiring the exclusive employment of union labour.

It is true that the effect of these measures is limited to the relations between employers and workers engaged in " interstate commerce ", but non-union contracts are now in point of fact almost everywhere prohibited, since many States have followed the example set by the Federal legislation.

(b) *Protection against anti-union discrimination.* — The stability and continuation of collective agreements may be threatened by a variety of measures : the dismissal of unionists covered by a collective agreement, unfair discrimination between unionists and workers not covered by collective agreements, material pressure on workers (reduction of wages, transfer to a lower grade, etc.), moral pressure, etc.

These forms of discrimination by which the worker is threatened

[1] Cf. *Legislative Series*, 1933, U.S.A. 2.

[2] For the text of this order, cf. *International Survey of Legal Decisions on Labour Law*, 1934-35, United States, No. 1, second case.

[3] Cf. *Legislative Series*, 1935, U.S.A. 1.

have led to the adoption of various protective measures, which the Office analysed in detail in its studies on freedom of association, to which the reader may be referred.[1] It may be noted, however, that countries which legally guarantee freedom to combine for trade purposes and the right of collective bargaining consider dismissal because of union membership or because of being party to an agreement, or any other discriminatory practice as an abuse of these rights, so that the worker who is the object of any such measure can claim compensation. Some countries even consider such measures as an offence for which penalties can be imposed.

But in view of the fact that this protection of the right to combine and to conclude agreements is likely to remain inoperative so long as the employee is obliged to prove (as is required by ordinary law) that the dismissal or discrimination was due solely to his being a member of a union or a party to an agreement — which can be proved only in very exceptional cases — some laws have gone so far as to reverse the system of proof. To quote merely one example, section 9 (4) of the Australian Commonwealth Conciliation and Arbitration Act provides that in any proceedings for an offence against freedom of association or of contract, if all the facts and circumstances constituting the offence, other than the reason for the defendants' action, are proved, it lies upon the defendant to prove that he was not actuated by the reason alleged in the charge.

With a view to preventing the parties to collective agreements from systematically giving preference to non-unionists, some laws make it compulsory for the employer, other things being equal, to give preference to union members.[2]

The Regulation of Competitive Bargaining

The second set of measures taken by the legislative authorities to strengthen the power of the trade unions to conclude agreements — they are, indeed, closely linked up with those already mentioned — is intended to prevent excessive competition in bargaining on the labour market.

The problem of regulating competitive bargaining obviously

[1] Cf. *Freedom of Association*, Vol. I, pp. 25 *et seq*, and the chapters of the national monographs concerning the legal status of trade unions. For more recent legislation, such as that of Brazil, Spain, the United States and Mexico, cf. *I.L.O. Year-Book* 1931, 1932, 1933 and 1934-35.

[2] Cf. *Australian Commonwealth Act*, section 40 (1*(a)*); *Italian Labour Charter*, sec. 23, etc. For further details, see below, p. 161.

does not arise in countries in which the trade union movement is highly centralised and bargaining is in practice carried on, in accordance with an express or tacit agreement, by the central organisations of employers and workers.

In this connection mention should be made of the national agreements — which are real treaties of mutual recognition — between the employers' and workers' organisations of the *Scandinavian countries*, which were subsequently legally recognised either by legislation or by the practice of the law courts and which still form the basis of the system of collective agreements.

The first treaty of this kind was the so-called " Concordat of 5 September 1899 ", concluded between the Confederation of Trade Unions and the Confederation of Employers' Organisations of *Denmark* at the end of a serious labour dispute. This Concordat first settled the question of principle which was the central point of the dispute ; it decided that collective agreements concluded between the two central organisations must be respected and applied by all the affiliated associations, and that the central organisations were responsible for this being done. It further laid down detailed rules to be observed by the parties in the event of a strike or lock-out being declared, and fixed the minimum period of notice for withdrawal from any agreement concluded between any of the affiliated organisations at three months. It recognised the right of the employers to organise and distribute the work in their undertakings and to employ whatever labour seemed best suited to their requirements. The Trade Union Federation undertook to use its influence to secure observance of this clause if necessary. Finally, an arbitration board was set up to settle any disputes arising out of the application of the Concordat. This September Concordat, which was a collective agreement concluded without the intervention of the public authorities, has for thirty years formed what may be called the constitutional law governing relations between employers and workers in Denmark, in so far as they are regulated by collective agreement, which is generally the case.[1]

This agreement was soon confirmed by the decisions of the law courts ; it was definitely ratified by the Permanent Arbitration Court Act,[2] which stipulated that disputes concerning infringements

[1] Cf. *International Labour Review*, Vol. XXVI, No. 5, Nov. 1932 : " Scandinavian Employers and Collective Labour Agreements ", by E. ERICHSEN. Cf. also *Freedom of Association, op. cit.*, Vol. III, Denmark, pp. 285 *et seq.*

[2] Cf. *Legislative Series*, 1929, Den. 2 B.

of the agreement of 5 September 1899 must be submitted to the arbitration court.

The Danish example was followed in 1906 by *Sweden*, when the central organisations of employers and workers concluded a national agreement on a similar basis, known as the " December Compromise ".[1]

On 9 March 1935, the central organisations of employers and workers in *Norway* also concluded a national agreement, which is all the more significant in that it led to the repeal of certain provisions of the Labour Disputes Act of 1934 that were thought to restrict the freedom of the trade unions.[2] The chief purpose of these provisions had been to organise satisfactorily the vote that would have to be taken when the collective agreements expired in the spring of 1935, but it was understood that they could be repealed if the parties succeeded in establishing a satisfactory system of collective bargaining ; as the blanket agreement between the parties did in fact regulate the voting procedure, the whole matter was thus settled.

According to the agreement of 9 March 1935, the blanket agreement will remain in force until 31 December 1939 and may be extended automatically for periods of two years at a time, unless either party gives six months' notice of withdrawal from it. It guarantees freedom of association and the right of collective bargaining to workers and employers alike. Other provisions deal with the procedure for voting on collective agreements, the appointment and powers of workshop delegates, etc. Voting on proposals for collective agreements must be by secret ballot and in writing ; no proposal can be validly rejected unless at least half the members entitled to vote have voted in the negative.

Thus the principle of the recognition of the central organisations of employers and workers as the principal parties to collective agreements has been definitely established in the three Scandinavian countries without any previous direct intervention of the legislative authorities.

Quite recently national agreements of a similar kind were concluded in France and in Belgium.

As a result of an extensive strike movement in *France*, which

[1] For the text of this agreement, cf. *Freedom of Association*, *op. cit.*, Vol. III, Sweden, p. 328.

[2] For the text of this agreement, cf. *Industrial and Labour Information*, Vol. LIV, No. 8, pp. 247-249, and *Legislative Series*, 1934, Nor. 1, and 1935, Nor. 1.

threatened to spread throughout the country, the French General Confederation of Production and the General Confederation of Labour, after arbitration by the Prime Minister, agreed on 7 June 1936 to a collective agreement of a general nature, known as the " Matignon Agreement ".

Under this agreement, which is intended to form the basis of all future regulation of industrial relations in France, the employers' representatives agreed to the immediate preparation of collective contracts of employment, which were to include also the following clauses on freedom of association, wages, and workers' representation :

Freedom of Association. On the ground that it is the duty of citizens to obey the law, the employers acknowledged the right of freedom of opinion and the right of all workers freely to join and belong to a trade union established in virtue of Book III of the Labour Code

The employers undertook that in arriving at decisions in regard to engagement, conduct or distribution of work, disciplinary measures or dismissal, they would not take into consideration the fact of the workers belonging or not belonging to a trade union.

If one of the contracting parties questions the grounds for dismissal of a worker, alleging such dismissal to have been carried out in breach of the aforesaid right of association, both parties are to take action to ascertain the facts and to bring about a fair settlement of all disputed cases. Such action will not affect the right of the parties to secure judicial apportionment of damages by process of law.

The exercise of the right of association may not give rise to acts contrary to law.

Wages. - It was agreed that from the day of resumption of work the real wages in effect for all workers on 25 May 1936 should be registered on a descending scale beginning with an increase of 15 per cent. for the lowest wages and ending with an increase of 7 per cent. for the highest wages, provided that the total wage bill of each undertaking might not in any instance be increased by more than 12 per cent. Any wage increases granted since 25 May 1936 were to be credited towards this adjustment, but when such increases exceeded the adjustment, the excess was to remain in effect.

The negotiations for the fixing by collective agreement of minimum wages by districts and occupational classes, which were to be begun at once, were to devote particular attention to the necessary readjustments of wages which are ordinarily low.

The employers' delegation undertook to carry out the necessary adjustments to maintain a normal relation between wages and salaries.

Workers' Representation. - Apart from the special cases already covered by the law, it was agreed that there should be established for every undertaking with over 10 workers, after agreement between the trade associations or, in their absence, between the parties concerned, two workers' delegates or several delegates and substitute delegates according to the size of the undertaking. These delegates are to have authority to submit to the management such individual demands as

have not been directly met in regard to the observance of Acts, Decrees, regulations of the Labour Code, wage scales, and health and safety measures. All workers of both sexes aged 18 and over may participate in the election of delegates, provided that they have at least three months' service in the undertaking at the date of election and have not been deprived of their civil rights. Persons eligible to serve as delegates are to be those who are qualified as electors under the preceding clause, who are of French nationality and at least 25 years of age, and have worked uninterruptedly in the undertaking for a year; provided that a shorter period of service may be agreed on if insistence on the full year's service would reduce the number of persons eligible to less than five. Workers carrying on a retail business of any kind, whether on their own account or through their wives, are not to be eligible.

The employers' delegation undertook that no penalties would be imposed in connection with the strike. The workers' delegation agreed to ask the workers on strike to decide upon the resumption of work as soon as the managements of undertakings had accepted the general agreement, and negotiations in regard to its application had been started between the managements and the staffs of undertakings.

This agreement was subsequently incorporated in most of the collective agreements concluded for various industries and occupations, and was finally confirmed by the Collective Agreements Act of 24 June 1936, the structure of which will be discussed in more detail in the following chapters.

In *Belgium*, too, it was in consequence of a widespread strike movement throughout the country that, under the chairmanship of the Prime Minister, an agreement of principle was concluded on 17 June 1936 between the representatives of the Central Industrial Committee on the one hand and the Belgian Trade Union Commission and the Federation of Christian Trade Unions on the other. This agreement dealt with the following points among others:

Adjustment of Wages. — A general raising of wages was considered desirable and it was agreed that a minimum wage of 32 francs for eight hours' work should be fixed for able-bodied adult industrial workers working full time. Any exceptions to this minimum that might be needed would be fixed by joint committees.

The Government was called on to adjust family allowances to the new situation.

Holidays with Pay. — A system of holidays with pay on the basis of six working days' leave a year is to be established without delay. It will take into account length of service on the one hand and the seasonal nature of certain industries on the other.

Freedom of Association. — It was noted that cases had occurred in which the freedom of the worker in regard to trade association had

not been duly respected. All were agreed that such freedom should be effectively secured and that the Government ought to take the necessary measures for the purpose.

Hours of Work. — It was agreed that hours of work should be reduced gradually to 40 in the week in industries or branches of industry in which work is performed under dangerous or arduous conditions. The principles in question were to be established by legislation and the list of industries and the methods of applying the principles to be laid down in Royal Orders.

Joint Committees. — The agreement on the points mentioned above was reached between the representatives of the three organisations in question, but they had no authority to bind their associations. They undertook, however, to recommend the ideas to their associations and agreed that the various joint committees should be convened at once and should consider the application of the proposed measures in their respective industries. They would be invited to submit their conclusions at the earliest possible date.

In the branches of industries in which there is no joint committee, the Government, pending the appointment of such a committee, would arrange for the necessary contact between the employers' associations and trade unions concerned.

As regards salaried employees, the Government would consider at an early date how best to establish the necessary contact with representatives of the employers' associations and salaried employees unions.

In consequence of this agreement most of the joint committees established special agreements for the principal industries and occupations. As in France, an Act on joint committees and collective agreements will probably confirm and consolidate the new regulations.

Side by side with this natural trend towards integration, there exist among the employers' and the workers' organisations certain centrifugal tendencies. In many countries, occupational associations of varying denominational or political views compete with each other on the labour market. This involves competitive bargaining, and the consequence is that many agreements are concluded, prescribing different conditions of employment and of production, often in one and the same occupation or industry.

Various measures, which will be very briefly described, have been taken by the legislative authorities to counteract this tendency.

Even under systems that confer the right to conclude agreements on all occupational associations without distinction, the law courts have retained the right to verify the status of the contracting parties. The *German* courts, for example, have always refused to grant the right to conclude collective agreements to mixed unions, works unions and others that are not able to assume the

rights and obligations arising out of the collective agreements.

It is of interest to note that the same principles were incorporated in the *German-Polish* agreement of 15 May 1922 concerning Upper Silesia. Section 161 of that agreement defines trade unions as being voluntary associations of workers for the sole or main purpose of regulating working relationships by collective agreements, provided that they fulfil the following conditions :

(a) Membership of a union must not be subject to the condition of working in any particular undertaking ;

(b) Employers may not belong to a trade union. Trade unions are forbidden to accept subsidies or any other assistance from employers ;

(c) The defence of the occupational interests of members must not involve any pressure extraneous to the unions, more especially political pressure.

The distinction thus made between the trade unions, representing the workers in an industry or occupation, and works unions, the scope of which is obviously limited to a single undertaking, finds indirect confirmation in the legislation of certain countries concerning works councils.

The former *Austrian* Works Councils Act [1] authorised these councils, subject to the consent of the trade unions, to supplement the collective agreements concluded by the latter by certain detailed rules for their application, but works agreements were not otherwise permitted to take the place of collective agreements.

Similarly, the former *German* Works Councils Act [2] did not allow these councils to enter into collective agreements, but it entrusted them with the supervision of the enforcement of agreements concluded by the trade unions. They thus had a certain power of supervision, but were not able to take the place of the trade unions in fixing the working conditions of those employed in the undertaking.

It may be added that the new *Austrian* regulations concerning works communities [3] and also the German regulations concerning confidential councils,[4] which replace the older works councils legislation, retain the principle of this distinction.

[1] Cf. *Legislative Series*, 1920, Aus. 19-20.
[2] Cf. *Legislative Series*, 1920, Ger. 1-2, 11.
[3] Cf. *Legislative Series*, 1934, Aus. 7.
[4] Cf. *Legislative Series*, 1934, Ger. 1.

The same problem in a similar form had to be faced by the legislative authorities of the *United States*. Section 7 *a*, paragraph 1, of the National Industrial Recovery Act of 16 June 1933 had laid down the rule that the parties must include in every code of fair competition the following clause : " That employees shall have the right to organise and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ". As the application of these provisions in practice gave rise to numerous difficulties of interpretation, the Government set up on 30 June 1934 a National Labor Relations Board,[1] the duties of which were, *inter alia*, to investigate issues, facts, practices or activities of employers or employees in any controversies arising under section 7 *a* of the Act, and when it appeared in the public interest, to order and conduct elections by secret ballot of representatives of employees for the purpose of collective bargaining with the employers.

The rulings of this Board will not be analysed ; suffice it to say that it established the principle that the trade union receiving the majority of votes should be considered as the only one representing the workers and therefore as solely entitled to conclude collective agreements. The provisions of section 7 *a* of the Act of 16 June 1933 lapsed, as will be remembered, when the Supreme Court declared the Act invalid.

But the National Labor Relations Act of 5 July 1935 revived these clauses and defined their scope more closely. This Act not only prohibits it as an " unfair labor practice " for the employer to interfere with, restrain or coerce employees ; it also forbids him to interfere in the formation or administration of any labour organisation or to contribute financial or other support to it. Section 9 of the Act also maintains the principle laid down by the National Board by stating that the representatives designated by the majority of the employees will be the exclusive representatives of all employees in the undertaking for the purposes of collective bargaining.

In order to secure the observance of all these clauses, the new Act appointed a National Labor Relations Board, having sole power to settle disputes arising out of the violation of the

[1] Cf. *Legislative Series*, 1934, U.S.A. :

provisions concerning unfair labour practices — subject of course to a right of appeal to the ordinary courts — and the power to organise elections for the appointment of representatives to conclude collective agreements.

The *Australian Commonwealth* and the separate States have adopted another method — the registration of the association as an " organisation ", which gives it the right to conclude collective agreements and to be a party to conciliation and arbitration procedure. Registration may be refused if a registered organisation already exists to which the members of the organisation could without difficulty belong. The same method is applied in the *Union of South Africa.*

The *Mexican* Federal Labour Code makes it compulsory for an employer to conclude the collective agreement with the trade union which has the largest membership among the workers in his undertaking. Moreover, the Federal conciliation and arbitration boards decline to grant registration to minority unions if the interests of the workers are more effectively furthered by the more representative unions.

Similarly, in *New Zealand*, under the Act of 8 June 1936 no industrial union may be registered, except with the concurrence of the Minister of Labour, if there already exists for the same industry in the same industrial district either a registered industrial union or a trade union registered before 1 May 1936.

This process of rationalisation in the methods of concluding collective agreements has been carried more or less to extremes in the legislation of the *U.S.S.R., Italy, Austria, Portugal* and

The Labour Code of the *U.S.S.R.*[1] reserves for majority unions or recognised unions the exclusive right of concluding collective agreements, the clauses of which apply to all persons employed in the undertaking, occupation or industry which the agreement covers, whether or not these persons belong to a trade union.

Section III of the *Italian* Labour Charter, which lays down the same principle very clearly, reads : " Trade or occupational organisation is free. Nevertheless, only trade associations which are legally recognised and placed under the supervision of the State have the right to represent at law the whole category of employers or workers for which they are formed, to safeguard

[1] Cf. *Legislative Series*, 1922, Russ. 1, secs. 15 and 16.

their interests in relation to the State and to other trade associations, to conclude collective contracts of employment binding on all persons belonging to the category concerned, to levy contributions upon them and to exercise in respect of them any public functions entrusted to them ".

The *Austrian* regulations (Order of 2 March 1934, supplemented by the Order of 3 December 1934 concerning the Confederation of Workers and Salaried Employees ; Act of 17 October 1934 concerning the establishment of a Federation of Manufacturers), as well as those of *Portugal* (National Labour Code, issued by Decree of 23 September 1933) and of *Bulgaria* (Decrees of 30 July 1934 and 11 September 1934 concerning trade unions) are based on the same ideas. Similar trends may be seen in the bills at present under discussion in the *Baltic countries* and in *Hungary*.[1]

It may also be noted in passing — for the matter will be referred to again later in connection with the scope of collective agreements (cf. below, p. 182) — that the former *German*[2] and *Austrian*[3] regulations, the *Australian* conciliation and arbitration laws,[4] the *Brazilian* Decree of 23 August 1932 concerning collective labour agreements,[5] the Act of 20 April 1934 concerning the extension of collective agreements in the Province of Quebec[6] and the Industrial Standards Acts of 1935 in Alberta and Ontario, *Canada*, the *French* Act of 24 June 1936 on collective agreements (section 31 v*(d)*, the *Greek* Act of 16 November 1935 on collective agreements (section 6)[7], the *Mexican* Federal Labour Code of 18 August 1931,[8] the *British* Cotton Manufacturing Industry Act of 18 June 1934[9] and the Legislative Decree of 29 April 1935 to regulate conditions of work in the textile industry in

[1] Cf. Decree No. 52000 of 1935, concerning the establishment of wage committees in certain branches of industry (*Legislative Series*, 1935, Hung. 6).

[2] Cf. Decree of 23 December 1923 concerning collective agreements (*Legislative Series*, 1923, Ger. 2) and Act of 28 February 1928 to amend the above (*Legislative Series*, 1928, Ger 2). This legislation was repealed and replaced by the National Labour Act of 20 January 1934, which also prescribes that collective regulations and works regulations will be applicable to third parties.

[3] Cf. Act of 18 December 1919 concerning conciliation boards and collective agreements (*Legislative Series*, 1920, Aus. 22), amended by the Order of 16 February 1934 concerning the maintenance of collective agreements (*Legislative Series*, 1934, Aus. 2).

[4] Cf. *Legislative Series*, 1928, Austral. 2.

[5] Cf. *Legislative Series*, 1932, Braz. 6, sec. 11.

[6] Cf. *Legislative Series*, 1934, Can. 5.

[7] Cf. *Legislative Series*, 1935, Gr. 7.

[8] Cf. *Legislative Series*, 1931, Mex. 1, sec. 58.

[9] Cf. *Legislative Series*, 1934, G.B. 7.

Czechoslovakia [1] empower certain administrative or certain judicial bodies to declare collective agreements freely entered into by trade unions to be binding on third parties. [2]

The Obligation to conclude Collective Agreements

In systems that take the trade unions as a basis for collective agreements, the initiative in concluding collective agreements rests, as a rule, with the parties themselves.

If the trade unions have a monopoly of the right to conclude agreements (whether only in practice or guaranteed by law), the obligation to enter into collective agreements is more or less an automatic consequence of the working of this system.

Some countries, however, have laid down the compulsory principle in their legislation. In *Italy*, for example, section XI of the Labour Charter lays it down as the duty of recognised trade associations to enter into collective contracts to govern the labour relations between the categories of employers and workers which they represent.

Similarly, section 43 of the *Mexican* Labour Code and section 34 of the Labour Law, *Venezuela*, stipulate that any employer who employs workers belonging to a trade union must conclude a collective agreement with that union if the latter so desires.

In the *United States*, the National Labor Relations Act of 5 July 1935 includes among " unfair labor practices " the refusal of the employer to bargain collectively with the organisation selected for this purpose by the majority of the workers concerned.

But so long as the legislation does not prescribe compulsory arbitration for fixing the contents of collective agreements, the obligation is merely to negotiate rather than actually to conclude collective agreements.

[1] Cf. *Legislative Series*, 1935, Cz. 1.

[2] These conditions also apply in the Irish Free State, in accordance with section 50 of the Act of 14 February 1936 on conditions of employment (cf. *Legislative Series*, 1936, I.F.S. 1).

CHAPTER II

COLLECTIVE AGREEMENTS ON AN OCCUPATIONAL BASIS

In some countries this primary method of regulating collective agreements on the basis of the trade unions is supplemented by another: regulation of collective relationships on an occupational basis.

In these systems, there are joint permanent bodies, generally composed of an equal number of representatives of the employers' and workers' occupational organisations concerned, which are responsible for fixing working conditions by agreements that have the same effects and the same status as collective agreements in the strict sense of the term. In this system, which might be called the secondary method of organising labour relations, the various sections of the trade union movement may sink their differences and work together, without thereby giving up any of their independence.

The principal types of regulation of collective conditions of employment on an occupational basis will be studied below, first for the countries where such regulation is purely voluntary, and then for those where it is based more or less on legislation. The following will thus be considered in turn: the *British* joint industrial councils, the *Belgian* joint committees, the *Luxemburg* National Labour Council, the *French* joint committees, the *South African* industrial councils, the joint conferences of the *Canadian* provinces of Alberta and Ontario, the *Spanish* joint labour boards, and the *Netherlands* industrial councils.

It will be remembered that the *British* joint industrial councils [1]

[1] With regard to the origin, working and powers of the joint industrial councils in Great Britain, cf. *International Labour Review*, December 1921: "Joint Industrial Councils in Great Britain"; *Ibid*, October 1923: "Progress of Joint Industrial Councils in Great Britain"; INTERNATIONAL LABOUR OFFICE: *Industrial Relations in Great Britain*, by J. H. RICHARDSON, Studies and Reports, Series A (Industrial Relations), No. 36, Geneva, 1933.

regulate conditions of remuneration and a variety of other matters without any legislative intervention whatsoever. Whereas the decisions of the trade boards [1] — official bodies set up by Acts of 1909-1918 in ill-organised industries and trades — come into force as soon as they have been approved by the Minister of Labour and are binding on all members of the occupation, the decisions taken by the joint industrial councils are — morally speaking — binding only on the bodies represented on the councils. But there is a certain movement in favour of giving legal effect to the agreements arrived at by the councils. For several years back, Bills have been regularly submitted to Parliament for the establishment of a complete system of joint bodies: works councils as a basis, [2] joint industrial councils for various industries as the second stage [3] and a national industrial council as the crown of the system.[4] The Industrial Councils Bill, which is the one of greatest interest in the present connection [5] proposes that such joint bodies should be set up and their agreements made legally binding.

It should be pointed out, however, that there is considerable opposition to the movement in favour of legalising voluntary trade agreements. A first step in this direction was nevertheless taken by the Cotton Manufacturing Industry Act of 18 June 1934.[6] The Act enables organisations representing the majority of the employers and of the workers in the cotton industry to make a joint application to the Minister of Labour for the issue of an Order giving statutory effect to any agreement made between them as to rates of wages. A board of three persons not connected with the industry decides, with the assistance of a certain number of representatives of the organisations concerned, whether the proposed measure is desirable. This decision must be unanimous, whereupon the Minister of Labour may issue an Order enforcing the agreed wage rates for all persons in the industry.

This procedure has been put into practice, and an Order of the Minister of Labour of 27 June 1935 made the rates of wages

[1] Cf. *International Labour Review*, August 1923 : " The Economic Effects of the British Trade Boards System ", by Dorothy M. SELLS. The Act of 7 August 1924 regulating the wages of agricultural workers provides for a similar system in agriculture (cf *Legislative Series*, 1924, G.B. 5).

[2] Cf. *Hansard*, C. Vol. 298, No. 46 : " Works Councils Bill ".

[3] Cf. *Ibid* : " Industrial Councils Bill ".

[4] Cf. *Ibid* : " National Industrial Council ".

[5] Cf. analysis of this text in *The I.L.O. Year-Book 1931*, pp. 482-484, and *The I.L.O. Year-Book, 1932*, pp. 285-286.

[6] Cf. *Legislative Series*, 1934, G.B. 7.

fixed by collective agreement binding on all persons employed in the industry.[1]

Similarly, in *Belgium*, the establishment by groups of industries of joint committees of representatives of the various interests involved is directly linked up with the industrial associations of employers and workers. It is based on the mutual recognition of these associations as the legitimate representatives of the occupational interests of all the employers and all the workers. The joint committees are appointed by Royal Decree, with a Government representative as chairman. The main questions with which they deal are wages and other working conditions. They are also consulted with regard to the exemptions that may be granted from the statutory provisions concerning the eight-hour day and the 48-hour week.

As a general rule, it is the parties concerned that must take the initiative in establishing joint committees. The authorities intervene only at the request of the employers' and workers' organisations; they then endeavour to obtain the consent of all the organisations concerned, and they allocate the representation on the committee according to the interests of various districts and the numerical strength of the groups in question. These committees may be national or regional, according to whether the industry is spread over the whole country or concentrated in a certain area. The committees carry out investigations and act as conciliation boards, but their decisions are not binding. So far, therefore, in Belgium as in Great Britain, the organisation of collective relations on an occupational basis is an entirely voluntary matter.

But in Belgium also there is a tendency to develop in the direction of statutory regulation of these agreements. It may be noted, for instance, that a Bill is at present before Parliament [2] for the purpose of granting a definite legal status to employers' associations and trade unions, recognising collective agreements concluded between these bodies and setting up official joint committees for every trade. The Bill further proposes the establishment of district and national production committees. The preamble states that the purpose of combining in a single Bill all the provisions concerning trade unions, collective agreements, joint trade committees and production committees is to organise the various

[1] Cf. the text of this Order in *The Ministry of Labour Gazette*, July 1935, p. 246: "Legalisation of Wage Rates in the Cotton Weaving Industry".

[2] Cf. *Chambre des représentants*, No. 12, Session 1934-35: Bill concerning the legal status of industrial associations, collective agreements and joint committees.

trades, to set up authorities for each occupation and to further the adoption of occupational regulations. Moreover, in 1935 the Prime Minister announced in his ministerial declaration that the Government intended to proceed gradually to organise the various trades and that it proposed to entrust certain organisations representing these organised trades with certain powers of regulation, within the limits and in accordance with the economic and social aims of the trade in question.

Quite recently the question of the regulation of conditions of employment through the joint committees again became acute. Mention has already been made of the part played by these committees in the settlement of the national industrial dispute that broke out between employers' and workers' organisations in June 1936.

The Government declaration, read on 24 June 1936 by the Prime Minister to the Chamber of Deputies, contemplated an early settlement through the joint committees and collective agreements. The Government stated that it attached the highest importance to the general establishment of the system of joint committees and collective labour agreements. A Bill would be presented for the setting up of joint committees in a large number of industries in which the need for them had been felt. At the same time the Government would submit to Parliament provisions intended to ensure the observance by all the parties concerned of the stipulations contained in collective agreements. The Government would itself make use of all the means at its disposal to secure the observance and wide application of such agreements ; among other things, it would introduce in the rules relating to the acceptance of tenders a clause which would make possible the exclusion of any contractor, whether for works or for supplies, who refused to apply the provisions of the collective agreements in operation. [1].

In *Luxemburg*, too, the organisation of labour relations was recently placed on a statutory basis by a Decree of 23 January 1936, which set up a National Labour Council.

This Council, which in reality will carry out the duties of a national industrial relations council, is composed of an equal number of delegates from the most representative trade unions and employers' associations (in fact, the employers' and workers'

[1] Cf. *Chambre des Représentants*, No. 79, Extraordinary Session 1936 · Bill concerning the legal status of joint committees.

delegates to the International Labour Conference), the chairman being the Minister of Labour and Industry. Special committees formed on the same lines have been set up for the various branches of industry. The main task of the Council is to make for conciliation between workers and employers in collective labour disputes, and more especially to assist in solving the problem of wages. The Council may, *ex officio*, deal with any collective dispute even if not referred to it by one of the parties. Conciliation procedure is compulsory, but the decisions are not binding on the parties unless they agree of their own free will. In consequence of the action of the National Labour Council, national collective agreements have been concluded for the principal industries of the country, in particular for the metallurgical industry and iron mining.

This contractual form was also introduced in *France* by the Collective Agreements Act of 24 June 1936. Under the new sections 31 v *(a)* and *(b)* of the Labour Code, the Minister of Labour or his representative will convene a meeting of a joint committee with a view to the conclusion of a collective labour agreement to regulate relations between employers and workers in a given branch of industry or commerce for a given district or for the whole of France.

The joint committee will include delegates of the most representative trade associations of employers and workers in the branch of industry or commerce in the district concerned or in the whole country, as the case may be.

If the joint committee so convened is unable to agree on one or more of the clauses to be introduced in the collective agreement, the Minister of Labour, at the request of one of the parties and after consulting the competent trade section of the National Economic Council, must endeavour to bring about agreement.

In pursuance of these provisions the Minister of Labour addressed a circular on 4 April 1936 to the prefects of departments, instructing them to set up immediately in each department a joint consultation committee as prescribed by the Act and defining its functions in the following terms :

" It frequently happens that when a dispute arises it cannot be settled by direct negotiations between employers and employed, the parties having no one to bring them together and help them to reach agreement. In future such disputes are to be referred to the joint consultation committee in each department.

" The committee will sit under the chairmanship of the prefect and will consist of employers and workers in equal numbers, appointed

on the proposal of the Chambers of Commerce in the case of employers, and the departmental federations of trade unions in the case of the workers.

"Whenever a dispute is referred to a committee, it will appoint an official with the necessary qualifications, who will approach both parties and try to initiate negotiations. The prefect will not summon the parties to appear before the committee unless conciliation by the official fails.

"The committee will not normally give decisions which are binding on the parties. Its main function is to act as a conciliation authority which, at the request of the parties or on its own initiative, will make recommendations or propose a settlement. It will issue arbitration awards only in very exceptional cases, when both parties agree in defining the questions submitted to it and undertake to accept the award."

In brief, collective labour disputes will in future be referred in each department to the joint conciliation committee. In the Department of the Seine, disputes will continue to be referred to the divisional labour inspector.

These regulations show that, while recourse to the joint committee is compulsory, the decision taken by the committee is not binding on the parties unless they voluntarily accept it. The agreement reached between the parties before the committee has the legal force of a collective agreement, the nature of which wil be considered in other chapters of this study.

In the *Union of South Africa* the principle observed is that it is for the parties themselves to take the initiative in setting up industrial councils.

Under section 2, subsection 1, of the Conciliation Act of 26 March 1924,[1] amended by the Acts of 28 May 1930 [2] and 7 March 1933,[3] a registered employers' organisation or any group of two or more registered employers' organisations may agree with a registered trade union or group of registered trade unions for the establishment of an industrial council for the consideration and regulation of matters of mutual interest to them and the prevention and settlement of disputes.

Once formed, however, the council acts under State supervision. Any industrial council so set up, adds section 2, must be registered. An application for the registration of the council must be made in writing to the competent Minister by the parties, who must furnish with the application information as to the

[1] Cf. *Legislative Series*, 1924, S.A. 1.
[2] *Ibid.*, 1930, S.A. 5
[3] *Ibid*, 1933, S.A. 1.

authority under which the application is made ; the numbers and occupations of the persons authorising the application ; the character of the undertaking, industry, trade or occupation in respect of which it is desired that the industrial council shall be registered; the area for which it is desired that the industrial council shall be registered ; and the situation of the head office of the industrial council, together with a copy of the constitution and rules of the industrial council and of any agreements between the parties.

If the Minister is satisfied that the agreement for the establishment of the industrial council is in accordance with the terms of the Act and that the industrial council would be sufficiently representative within any area of the particular undertaking, industry, trade or occupation, he must register the constitution and rules. Upon the application of the council he may in his discretion from time to time increase or decrease or vary such area in order to make it conform with the limits within which the council is representative.

The Minister may also cause the name of the council to be removed from the register if he is satisfied that it has ceased to exist or to perform its functions under the Act ; or that a resolution for the removal of its name from the register has been passed by a majority of its members at a joint meeting ; or that a majority of the representatives of the employers or a majority of the representatives of the workers upon the council have

The rules of a registered industrial council must provide, among other things, for the appointment of an equal number of representatives of employers and employed and of substitutes and the method of such appointment and for the election of a chairman and, whenever occasion arises, of a person to preside over meetings in his absence, and the method of such election.

The decisions of the industrial councils must be the result of agreement between the parties unless they voluntarily refer the matter to arbitration. But once an agreement has been reached, the Minister may, at the request of the parties, publish by notice in the *Gazette* the agreement arrived at, and therein declare that from a date and for such period as may be specified by him in the notice, the terms of the agreement shall be binding upon the parties to it and upon the employers and workers represented upon the council.

Similarly, if he is satisfied that the applicants are sufficiently representative of the undertaking, industry, trade or occupation

concerned, he may publish by notice in the *Gazette* the agreement arrived at and therein declare that from the date and for such period as may be specified by him in such notice all the terms of the said agreement, or such terms as he may specially indicate, shall within the area defined by him become binding upon all employers and workers in that undertaking, industry, trade or occupation.

Any person who fails to comply with a condition which has become binding upon him by virtue of a notice published in the *Gazette* is guilty of an offence, and renders himself liable to a fine not exceeding £20. [1]

Two recent Acts in *Canada*, the Industrial Standards Acts of Alberta and Ontario, rest on similar principles. Under these Acts,[2] the main provisions of which are identical, the Minister of Labour may, upon the petition of representatives of employers or of workers in any industry, convene a conference or series of conferences of employers or workers engaged in such industry in any one or more zones for the purpose of investigating or considering the conditions of labour and the practices prevailing in such industry and for negotiating standard or uniform rates of wages and hours of work in each industry in the said zone or zones.

The employers and workers attending the conference may agree upon a schedule of wages and hours of work for all or any class of workers in the industry within the zone or zones in question.

If a schedule of wages or hours of work for any industry is agreed upon in writing by a proper and sufficient representation of workers and employers, the Minister may approve thereof, and upon his recommendation the Lieutenant-Governor in Council may declare the schedule to be in force for a period not exceeding twelve months, thus making it binding on every worker and employer in the industry in the zone or zones in question.[3]

The *Spanish* Act of 27 November 1931 [4] took the place of the

[1] For further details of the system of conciliation and arbitration in the Union of South Africa and its working, cf. *Conciliation and Arbitration in Industrial Disputes* "Union of South Africa".

[2] Cf *Legislative Series*, 1935, Can. 3.

[3] For an account of the application of these Acts cf *The Labour Gazette of Canada*, 1935 and 1936.

[4] Cf. *Legislative Series*, 1931, Sp. 15. This Act had been completely remodelled by an Act of 16 July 1935, consolidated by the Decree of 29 August 1935 (cf. *Legislative Series*, 1935, Sp. 3); but this latter Act in turn was repealed by the Act of 30 May 1936, which restored the whole of the provisions of the Act of 27 November 1931.

Decree of 26 November 1926 concerning the corporative organisation of the country, which was codified on 8 March 1929 [1] and changed into an Act on 9 September 1931.[2] It makes provision for the establishment of joint boards in all industries and occupations (including homework and rural labour), which are for this purpose classified in 24 groups.[3]

The joint labour boards are public institutions, responsible for regulating employment in the trade or occupations concerned and for acting as conciliation and arbitration bodies within the groups of industries for which they are set up.

They are set up by the Ministry of Labour and Social Welfare, either on its own initiative or on the application of the parties concerned.

A provincial joint labour board will be instituted as a rule for each industrial group ; it may be subdivided into sections with a view to facilitating the performance of its duties. The Minister of Labour may fix geographical boundaries other than those specified in the Act and may take other measures to adapt the system to the needs of any particular industry or occupation.

The joint boards consist of six employers' members and six employees' members and an equal number of substitutes, all being elected by the legally recognised organisations of employers and employees. [4] If one of the parties (employers' or employees' association) fails to participate in the election, or if the board is unable to perform its duties owing to the systematic and unreasonable refusal of the employers or employees in the industry, employment or occupation in question to appoint the members of the board for their party, the Ministry of Labour and Social Welfare may appoint them *ex officio*.

The boards take their decisions by majority vote, whereupon the decisions become binding for all employers and employees in the industry or occupation for which the board was set up.

The duties of the joint labour boards include the following :

1. To determine for their particular trade or occupation the general conditions for the regulation of employment, wages, the minimum duration of contracts, hours of work, over-

[1] Cf. *Legislative Series*. 1929, Sp. 1.

[2] With regard to the organisation, working and scope of the corporative system n Spain, cf. *Freedom of Association, op. cit.*, Vol. IV, Spain.

[3] For an enumeration of these groups, see sec. 4 of the Act in question.

[4] For the election procedure, cf. sections 13 to 20 of the Act in question.

time, the procedure and conditions for dismissal, and all other matters relevant to the above-mentioned regulation of employment, which shall serve as a basis for the conclusion of collective or individual contracts.[1]

In the case of rural employment the joint boards also lay down the conditions relating to the housing of employees who are not working merely for a daily wage ;

2. To take cognisance of all questions submitted to it respecting payment for overtime, wages disputes and the like, arising out of the interpretation and fulfilment of contractual obligations ;
3. To prevent disputes between capital and labour, and endeavour to settle such disputes if they arise ;
4. To make inspections (in conformity with the law) in respect of the observance of social legislation, and in particular of the decisions made by the boards, and also of collective and individual contracts, which shall conform at least to the minimum conditions adopted by the boards.

This brief analysis shows that this system of regulation is very comprehensive — its effects will be discussed in subsequent chapters — and covers all the problems affecting the occupations or industries concerned.

The *Netherlands* Act of 7 April 1933 [2] is based on similar principles, but the organisation of the system is different. The Minister of Labour sets up an industrial council in every industry or branch of industry in which circumstances render it desirable, either for the whole country or for a part of the country. The order by which it is set up specifies the operations which, according to the nature of the work, come within the jurisdiction of the industrial council.

Each industrial council consists of an even number of members, not being less than six or more than twenty. Half of the members and of their substitutes are appointed by the industrial association or associations of employers specified for the purpose by the Minister of Labour, and the other half by the industrial association or associations of workers, all or part of whose members are employed in the industry concerned. In fixing the number of members to be appointed to the industrial council by each specified

[1] With regard to the legislation governing the determination of conditions of employment, cf. the Act of 21 November 1931 concerning the contract of employment, secs. 9 *et seq.* (*Legislative Series*, 1931, Sp. 14).

[2] Cf. *Legislative Series*, 1933, Neth. 1.

industrial association, the Minister must take into account the number of members of each of the specified associations who are employed in the industry, in so far as this is possible in view of the other conditions requisite in order to obtain a suitable composition of the industrial council.

On the recommendation of the industrial council, other members or substitutes, who are not engaged in the industry for which the industrial council is set up, may be appointed to the industrial council in respect of all or certain activities, with or without the right to vote.

In matters falling within its competence, the industrial council may issue by-laws, provided that at least two-thirds of the members of the employers' group, at least two-thirds of the members of the workers' group and a majority of the additional members are in favour of the by-law. The by-law must then be approved by the Minister of Labour ; if approval is refused, reasons for the decision must be given. When it is approved, it is promulgated and becomes binding on all employers and workers engaged in the industry in question. The council may impose a penalty of imprisonment for not more than two months or a fine not exceeding 1,000 gulden for contraventions of the provisions of its by-laws. The industrial councils are competent to deal with the following matters :

(a) To draw up proposals for conditions of employment, if possible in the form of a collective agreement ;

(b) To draw up rules to promote adequate vocational instruction in trade schools, vocational classes and workplaces ;

(c) To consider measures for preventing and combating unemployment and increasing opportunities of employment ;

(d) To promote consultation between employers and workers in the various undertakings through a body set up for the purpose ;

(e) To promote the creation of funds and other institutions for the benefit of workers, either for the whole industry or for an undertaking or undertakings in the industry ;

(f) To discuss technical and commercial questions in the industry in so far as the said questions affect the situation of the workers ;

(g) To collect statistical data respecting the industry ;

(h) To encourage all measures likely to promote a good understanding between employers and workers in the country.

It will be seen that the powers of the industrial councils in the Netherlands, like those of the Spanish joint boards, are not restricted to the regulation of collective conditions of employment but extend to all questions affecting the social and technical organisation of the undertaking.

It may be recalled in this connection that the codes of fair competition in the *United States* are based on the same technical methods, as are also the corporative systems now in force in *Italy*, *Austria* and *Portugal*. But as the aim of these systems is to regulate working conditions in the light of economic conditions, they will be studied in the third part of this Report.[1]

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[1] Cf. below : " The Place of Collective Agreements in the Economic Structure ".

CHAPTER III

CONCILIATION AND ARBITRATION AS A BASIS FOR COLLECTIVE AGREEMENTS

Conciliation and arbitration procedure has a twofold connection with collective agreements, for it plays a part in the application of the agreements and is in itself a means of establishing agreements.

It is a notable fact — and also a proof of the intimate connection between the two systems — that in a number of countries, such as the *Union of South Africa*, *Australia*, *Denmark* and *Norway*, collective agreements are regulated by the actual legislation governing conciliation and arbitration, while in all other countries where collective agreements are legally recognised, the awards given by conciliation and arbitration boards are assimilated in all respects to collective agreements.

The influence of conciliation and arbitration on the application of collective agreements will be discussed later (cf. below : "Application of Collective Agreements") ; in the meantime a study is made below of conciliation and arbitration as a means of establishing collective agreements.

I. — Voluntary Conciliation and Arbitration as a Basis for Collective Agreements

Voluntary systems of arbitration and conciliation [1] do not differ legally from the contractual systems analysed in the preceding chapters. According to the definition given in several cases by national legislation, voluntary conciliation and arbitration are an auxiliary procedure for the conclusion of collective agreements.

This quality is brought out, moreover, by a series of characteristics common to most legislative measures relating to conciliation and arbitration.

[1] For an analysis of the texts, cf. *Conciliation and Arbitration in Industrial Disputes*, *op. cit.*

In the first place, the laws give precedence to conciliation and arbitration bodies set up on the sole initiative of the parties over similar bodies of an official origin.

In the second place, the laws closely associate the parties concerned — the workers' and employers' organisations — with the procedure, either by calling upon workers' and employers' delegates to sit, usually in equal numbers, on the conciliation and arbitration boards, or by choosing the members of such bodies from lists prepared by the trade associations.

Finally, awards are legally binding only if both parties accept them of their own free will. But — and herein lies the real difference between voluntary conciliation and arbitration and compulsory arbitration — as long as the application of awards depends on their acceptance by the parties concerned (even if such acceptance is to be presumed from the presence of the parties at negotiations or from their prior agreement to the procedure), there is an actual contract based on mutual willingness.

Naturally, between complete willingness and absolute compulsion there is a whole range of intermediate stages. Many, indeed, are the laws which have introduced certain measures of compulsion in conciliation and arbitration systems, such as the obligation to submit to conciliation (arbitration remaining optional), the prohibition of industrial disputes during negotiations, the obligation to appear and bear witness before conciliation and arbitration bodies, etc. But the contractual character is not compromised by such restrictions so long as the legal effect of awards depends on their acceptance by the parties to the dispute.

II. — Compulsory Arbitration as a Basis for Collective Agreements

Systems of compulsory arbitration constitute, on the other hand, a special means of establishing collective labour conditions.

Under such systems, the award is binding, even against the express wish of the parties. In this case, there is no longer any question of a voluntarily contracted agreement, but of rules laid down by State institutions.

Thus it is obvious that between the systems of voluntary conciliation and arbitration and compulsory arbitration systems the difference is not only one of degree ; it is also one of substance.

The regulation of labour conditions by compulsory arbitration leads to a new problem of considerable practical importance which

may be summed up in the following terms. So long as the procedure remains optional and the acceptance of the award voluntary, the parties interested continue to assume the entire responsibility for fixing collective working conditions, whereas under compulsory arbitration, it is in the last resort the State which, through the medium of the competent arbitration authorities, assumes that task. But as this method of regulation must necessarily withdraw the establishment of conditions of work from the influence of competition, the legislator is bound to replace the guarantees of contractual freedom by legal guarantees, or, in other words, to substitute a legal criterion for a business criterion. And it is from this angle that a study will now be made of arbitration systems limited to the public services ; arbitration systems which maintain the right of option as a rule and allow compulsion only as an exception ; and finally, systems of generalised compulsory arbitration. No reference will be made to systems of compulsory arbitration based on reasons of public order and implying no effective regulation of working conditions.

Compulsory Arbitration limited to Public Services

According to section 16 of the *Rumanian* Act of 5 September 1920,[1] as amended by the Royal Decree of 17 October 1932,[2] " arbitration shall be compulsory, and all collective stoppages of work shall be prohibited, in all State, departmental and communal undertakings and institutions, irrespective of their nature, and also in the following undertakings which serve public interests and the closing down of which would endanger the existence and health of the people or the economic and social life of the country ; undertakings for transport by land, water or air, including persons employed in loading and unloading ; petroleum wells and distilleries, coal mines, metal mines, and undertakings for the utilisation of natural gas ; gas and electricity works ; water and power distribution works ; mills, bakeries and slaughter-houses ; hospitals ; sewage and street-cleaning undertakings ; public health services ; offices attached to such undertakings, and banks. "

But in exchange for the loss of the right to strike which is thus imposed on them, wage-earning and salaried employees in such undertakings receive special legal protection. Thus, in order

[1] Cf. *Legislative Series*, 1920, Rum. 4.
[2] Cf. *Legislative Series*, 1932, Rum. 7.

to prevent employers from taking undue advantage of the prohibition of the right to strike, section 42 lays down that :

> In all undertakings in which arbitration is compulsory, the managements or employers concerned shall be required to draw up rules governing the conditions of work and the remuneration of their employees.

These rules are submitted to the Minister of Labour and Social Welfare, who approves them either as they stand or subject to the amendments which he considers desirable, after consultation with the employers' and workers' organisations concerned.

The preparation of rules putting the staff of these undertakings on a footing somewhat similar to that of public servants is therefore the legal counterpart of the deprivation of the right to strike.

Voluntary Arbitration with Compulsion as an Exception

Under the former *German* legislation relating to conciliation and arbitration (section 6, paragraph 1, of the Order of 30 October 1923,[1] as amended by the Orders of 9 January 1931 [2] and the Order of 27 September 1931 [3]), an award not accepted by both parties might be declared binding if the settlement contained appeared just and reasonable with due consideration for the interests of both parties, and if its application was desirable for economic and social reasons.

In this way, the conciliation and arbitration authorities had to base the compulsory establishment of working conditions on principles of equity which took account of the interests of both parties.[4]

In this connection, it may be noted that in recent years the legislative authorities in a number of countries have insisted on making provision for compulsory arbitration as a means of combating certain consequences of the depression and of preventing industrial disputes concerning the expiry and the renewal of collective agreements.

For example, under the *German* Order of 8 December 1931 relating to economic and financial stability,[5] the conciliation and

[1] Cf. *Legislative Series*, 1923, Ger. 6.
[2] Cf. *Legislative Series*, 1931, Ger. 1.
[3] Cf. *Legislative Series*, 1931, Ger. 8.
[4] For the working of this system, cf *Conciliation and Arbitration in Industrial Disputes, op. cit.* · Germany ; and for the effects of compulsory arbitration, cf. *International Labour Review*, Oct. 1925 : " The Compulsory Adjustment of Industrial Disputes in Germany ", by Dr. Fritz SITZLER.
[5] Cf. *Legislative Series*, 1931, Ger. 9.

arbitration boards were authorised to introduce changes in existing collective agreements and to reduce wages by 10 per cent. These measures were, however, accompanied by a number of guarantees of a social character : reduction of rents, reduction of prices of commodities of prime necessity (gas, electricity, etc.), which to some extent counterbalanced the sacrifices imposed.[1]

Similarly, in *Denmark* the legislative authorities introduced on various occasions measures for the regulation of conditions of employment in order to counteract the effects of the depression. The first occasion was in 1933, when the Social-Democratic and Liberal Coalition Government, as a part of a general " crisis agreement " concluded with the Agrarian Party, procured the passing by the Rigsdag of an emergency Act to prolong existing collective agreements for a year, and to prohibit stoppages of work during that period. By this means it prevented the outbreak of an extensive lock-out intended to enforce a general reduction of 20 per cent. in wages. In the following year the Rigsdag passed a Bill for compulsory arbitration in the slaughter-house industry the export trade of which was threatened by a strike. During the discussion in the Rigsdag on this occasion the spokesman of the Social Democratic Party declared that though in an emergency recourse was had to compulsory arbitration, this did not imply any departure from the opinion unanimously held by workers as well as employers that permanent compulsory arbitration, except in disputes arising out of the interpretation of collective agreements, was undesirable.

Finally, in 1936 the biggest industrial dispute which has occurred in Denmark for eleven years — a lock-out directly involving some 125,000 workers — was settled on 29 March 1936 by legislative intervention.

In the course of negotiations opened at the beginning of the year, the Danish Employers' Federation had demanded a prolongation of the existing collective agreements without alteration. The workers, basing their claim on the rise in the cost of living and the improved economic situation, had demanded wage increases, particularly in the lower-paid occupations, improved holiday conditions, and in some cases the introduction of a 40-hour week. In a few industries, e.g. the metal and textile industries,

[1] For the application of this Order, cf. *International Labour Review*, April 1932 : " Recent Emergency Legislation in Germany, with Special Reference to Wages and Hours of Work " by Dr. Fritz SITZLER. See below p. 215.

the workers accepted the proposed prolongation without any change, but on the whole they maintained their claims ; and the Employers' Federation declared the above-mentioned lock-out, on 22 February 1936, in order to provoke a settlement of the conflict at the earliest possible date.

On 17 March, when the dispute was in its fourth week, the State Conciliators laid before the parties a series of conciliation proposals, including one for revision of negotiation procedure which provided in some cases for voluntary arbitration. The approval of this proposal was made a condition of the approval of the new collective agreements, but it was added that this proposal could be adopted even if the other conciliation proposals were rejected. These other conciliation proposals included certain wage increases, particularly in the lower-paid occupations and in industries which had specially profited by public economic relief measures. In support of their proposals the conciliators referred to the rising price level, the improved market conditions, and the fact that the majority of the agreements were to be concluded for two years, subject to adjustment after one year in the event of substantial fluctuations in the cost of living.

The State Conciliators' proposals — with the exception of the new negotiation procedure, which was approved by a large majority both of the employers and of the workers — were adopted by the workers but rejected by the employers (though a minority of 41.2 per cent voted in favour of them).

In these circumstances, the Government introduced on 26 March a " Bill to prolong agreements between employers and workers and to prohibit stoppages of work ", which provided that the agreements on which negotiations had given no result should be prolonged with such changes and for such periods as had been proposed by the State Conciliators. As regards agreements expiring during the period April-May, on which no negotiations had as yet been undertaken, it was laid down that negotiations should be opened but that no strike or lock-out notice should be permitted.

The Bill met with strong opposition from both the Conservative and the Agrarian Parties ; but on 29 March the Rigsdag adopted, with the approval of all the principal parties, an " Act for the settlement of differences between the Danish Employers' Federation and the Danish Confederation of Trade Unions, between the Danish Employers' Federation and organisations outside the Danish Confederation of Trade Unions, and between other employers' and workers' organisations ".

The Act provided that the stoppages of work proceeding since 21 February 1936 should cease on 30 March and work should be resumed, with a provisional settlement of wage accounts. It further prescribed that fresh negotiations should be opened with regard to those parts of the Conciliation proposals of 17 March on which the parties had not agreed. These negotiations should be carried on under the direction of the State Conciliation Institution by a special committee, consisting of two representatives of each of the two central organisations of employers and workers (or of the organisation directly concerned, if it did not belong to a central organisation), and must be completed within five days. If agreement was reached in the committee with regard to the settlement of the differences, this settlement would be binding on the parties. If not, the decision — which must not be given a validity of more than two years — would be taken not later than 8 April by an arbitration board appointed by the Prime Minister and consisting of four members, namely, the President of the Permanent Arbitration Court as chairman, two members appointed by that Court, and a member appointed by the State Conciliation Institution.

As regards those branches of industry for which the collective agreements were due to expire between 1 April and 1 July, it was prescribed that negotiations should be opened without delay, and that if no agreement was reached before 22 April, the decision should be taken by the arbitration board.

As the conciliation committee was unable to settle the dispute within the prescribed period, the arbitration board issued an award in conformity with the provisions of the Act which on the whole confirmed the conciliation proposals and provided, among other things, for an increase in the wage rates for the lower paid occupations.

Steps of a similar nature were also taken in *Czechoslovakia*. Decrees issued on 15 June 1934 and 29 April 1935 prolonged until 1 March 1936 the validity of collective agreements in force and maintained the conditions of labour fixed by collective agreements or by awards of the arbitration boards or other bodies responsible for conciliation and arbitration procedure.[1]

In all these cases the restriction of the contractual freedom

[1] For information on the application of the Acts of 1 March 1922 and 5 February 1927 relating to compulsory arbitration in *Norway*, and now repealed, cf. *International Labour Review*, January 1925 : " Compulsory Arbitration in Norway ", by J. CASTBERG.

of the parties to collective agreements was counterbalanced by the maintenance of existing working conditions.

But the real problem of ascertaining how conditions of labour are to be established in the absence of a commercial criterion arises only under systems in which compulsory arbitration is the general rule.

Generalised Compulsory Arbitration

This is the system favoured by the laws of *Australia* — Commonwealth Act and Acts of the various States — and by those of *New Zealand*.[1]

It is not necessary to give its past history or an analysis of the various elements which go to make up the system of compulsory arbitration in Australia and New Zealand,[2] but it may be of interest to describe them briefly and to explain the principles involved.

The initial laws on conciliation and arbitration, adopted in 1890 following serious strikes which threatened to undermine the social stability of Australia, aimed at preventing industrial disputes and promoting the formation of trade associations, without any idea as to the compulsory establishment of conditions of labour.

Thus, at the outset, the aim was to establish a purely contractual method of regulation, based on the trade unions and a system of voluntary conciliation and arbitration.

The idea of establishing minimum wages took definite form for the first time in the Factory Acts adopted in New Zealand and the Australian State of Victoria, which authorised the appointment of wage boards for certain industries. This system was gradually extended to cover industry and trade as a whole and was ultimately put into operation by most of the other Australian States : Tasmania, New South Wales, South Australia, Queensland.

The second stage was thus characterised by the general adoption of wage boards or industrial courts empowered to fix minimum wages for all industries and trades.

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[1] Cf. list of laws concerning collective agreements in Australia and New Zealand (Appendix III).

[2] For information on the arbitration system in *Australia*, cf. *International Labour Review*, Oct., Nov., Dec. 1924 : " The Development of State Wage Regulation in Australia and New Zealand " by Miss D. McDaniel SELLS ; Feb. 1929 : " The New Conciliation and Arbitration Act in Australia " by O. de R. FOENANDER ; Dec. 1931 : " The New Commonwealth of Australia Conciliation and Arbitration Act " by O. de R. FOENANDER. For information regarding *New Zealand*, cf. *International Labour Review*, Oct. 1921 : " Industrial Peace in New Zealand " by Sir John FINDLAY ; March 1924 : " Experiments in State Control in New Zealand " by J. B. CONDLIFFE ; April 1931 : " The Effects of Falling Prices upon Labour Conditions in New Zealand " by J. B. CONDLIFFE.

Finally, the third period, extending from the beginning of the century up to the present day, witnessed the introduction of industrial arbitration courts which, while following the procedure of the wage boards, have a much wider social mission, because they are responsible not only for the establishment of minimum wages for certain classes of workers but they are also required to fix a " fair wage " and other conditions of labour for all classes of workers.

Nowadays, the arbitration courts appointed in New Zealand and in different States of the Commonwealth of Australia — but not in Victoria and Tasmania which have kept to the system of wage boards — are the principal means of regulating conditions of labour in Australasia.

It is thus seen that the arbitration system of Australia and New Zealand has been built up by successive stages and has retained something from each stage. Most of the laws provide several methods for regulating conditions of labour : regulation of minimum wages by wage and industrial boards, the legal recognition of collective agreements voluntarily concluded by trade associations, and voluntary conciliation and arbitration as a first step to a compulsory procedure. But all these methods lead ultimately to a system of compulsory arbitration by which, when all else fails, working conditions are governed. This being so, it is interesting to ascertain on what principles the system works, and what standards are taken in fixing conditions of labour.

Establishment of Working Conditions by Social Standards. — Purely experimental at the outset, the establishment of working conditions soon came to be based on social requirements, although these requirements were not expressed in figures at that time.

It was only in 1906 that the amount of the weekly basic wage was fixed for the first time, after an enquiry carried out personally by Judge Higgins, at 42*s.*, a sum representing the amount necessary to satisfy the normal requirements of an average wage-earner living in a civilised community. This basic wage, called the Harvester Wage, was generally adopted by all the Australian States as the basic remuneration for work and was increased or reduced according to fluctuations in the cost of living.

As all are aware, a " basic " or " living " wage is deemed to mean the minimum wage considered necessary for the decent maintenance of a typical working family composed of a given

number of persons, variable with the cost-of-living index but retaining always the same purchasing power.

It was therefore a question of a real minimum wage, invariable in principle, whereas the secondary wage was liable to vary with the qualifications of the labour employed, the nature of the work, occupational skill, the age and sex of the worker, etc.[1]

From this brief study it is clear that the fixing of the basic wage was left in the main to the authorities. In 1920, the Federal Government, anxious to give a scientific basis to the awards of the Courts, appointed a Committee of Enquiry known under the name of the " Basic Wage Committee ". This Committee was required :

(1) To establish accurate figures concerning the cost of living for a family of five persons living in average comfort. The Committee was to take into account all usual household expenses and to calculate each item separately ; (2) to draw up similar figures for each of the previous five years ; (3) to state what, in its opinion, was the best means of adjusting automatically the basic living wage to any fluctuations likely to occur in the purchasing power of the currency

The Committee came to the conclusion that the wages declared to be normal by the various Australian Courts were inadequate for the maintenance of a worker, his wife, and three children in reasonably comfortable conditions.

It appeared, moreover, that the average of five persons per family adopted as a uniform basis of calculation was too high and that it risked leading to unfair discrimination with regard to unmarried wage earners on the one hand, and wage earners with large families on the other. One of the indirect results of the enquiry was that New South Wales [2] introduced the principle of family allowances in its legislation, thus allowing unmarried workers to have the benefit of the basic wage while heads of large families received supplementary allowances to cover the cost of family responsibilities.

In conclusion, it may be said that the work carried out by the Committee of Enquiry contributed to the improvement of the methods employed for the establishment of a living wage without in any way undermining the principle of such wages.

[1] For a detailed study of the system of fixing wages, cf. G. ANDERSON : *Fixation of Wages in Australia*. Melbourne, 1929.

[2] Cf. *Legislative Series*, Australia (New South Wales), 1927, 4 and 8 , 1928, 3 ; 1929, 3 and 10 ; 1930, 1 ; 1931, 7.

Fixing of wages by economic standards. — Now, the regulation of conditions of labour by the authorities gives rise to another question which, moreover, has assumed first-rate importance as a result of the economic depression — to what extent should the authorities take account of the economic position of the under-

It is true that the laws governing conciliation and arbitration authorise the courts to make allowances for industries in temporary difficulties, to review working conditions in the light of changes in the economic situation, and to grant temporary exemptions to employers whose undertakings are in a precarious position, but all such measures must not be allowed to endanger the principle of a living wage which is considered to be the absolute minimum below which it is impossible to go. Certain courts went even further and gave it as their opinion that it was for the legislative authorities to put industry in a position to conform with arbitration awards by protecting and strengthening it when necessary by customs tariffs and export bonuses.

A provision requesting the courts, before making any award or certifying any agreement, to take into consideration the probable economic effect of the agreement or award on the community in general and the industry concerned in particular, was introduced in the legislation by a Federal Amending Act of 22 June 1928,[1] but this amendment was withdrawn by the Act of 18 August 1930.[2]

Thus, until recently, social standards remained pre-eminently the basis for the establishment of working conditions, economic standards being used only as a means of adjustment and in exceptional circumstances.

During 1931, however, the Commonwealth Court of Australia, like the Arbitration Court of New Zealand, decided to amend most of the awards rendered previously and to reduce the basic wage by 10 per cent. in comparison with wage rates in force in 1929.[3]

But in 1932, the trade associations of Australia requested the Court to restore the 10 per cent. cut made in wages, basing their claim not only on the traditional grounds of the standard of living in Australia but also on the economic argument of purchasing power. They pointed out that wages paid to adult workers under

[1] Cf. *Legislative Series*, 1928, Austral. 2, section 25 D.

[2] Cf. *Legislative Series*, 1930, Austral. 11.

[3] For the text of this award, cf. COMMONWEALTH BUREAU OF CENSUS AND STATISTICS, Australia . *Labour Report, 1931.*

awards of the Court were inadequate to ensure living conditions conforming with Australian standards and that it was impossible to restore the prosperity of industry unless the purchasing power of the community was increased so as to establish an equilibrium between production and consumption.

By an award of 5 May 1933, the Federal Court rejected the demand for the total abolition of the 10 per cent. cut, but adopted the workers' proposal to establish a new method of calculation of the basic wage. The Harvester Index was corrected by the more comprehensive All Items Index,[1] which had the effect of considerably reducing the loss of wages previously imposed. It may be noted that subsequently the 10 per cent. cut was progressively abolished in a whole series of industries and trades.

To sum up, it may be said that the system of compulsory arbitration in force in Australia has weathered the economic depression and still continues to be the principal means employed for the establishment of conditions of labour.

Only a very brief reference has been made here to the principles underlying compulsory arbitration in Australia, for this matter will be discussed later in connection with the issue of awards, their effects and their application.

In *New Zealand* the system of regulating wages and conditions of employment was based, as stated above, on similar principles and followed a similar course up to 1932.

As in Australia rates of remuneration fixed by awards and agreements were reduced by 10 per cent. in consequence of a general order issued in May 1931 in virtue of special powers granted by Parliament. In the following year, however, an Act of 27 April 1932 amending the Conciliation and Arbitration Act of 1 October 1925 abolished compulsory arbitration except as regards the fixing of minimum rates of wages for female workers.[2] The rejection of the system of compulsory arbitration was only temporary, however. A recent Act — the Industrial Conciliation and Arbitration Amendment Act of 8 June 1936 — not merely restored to the Arbitration Court its former jurisdiction in relation to industrial disputes that cannot be settled by direct negotiations or conciliation, but also profoundly modified the earlier legislation,

[1] For information about the new index, cf. COMMONWEALTH BUREAU OF CENSUS AND STATISTICS, Australia ; *Labour Report, 1932*, pp. 45 *et seq.*

[2] Cf. J. E. RICHES : " The Depression and Industrial Arbitration in New Zealand " in the *International Labour Review*, Volume XXVIII, No. 5, November 1933. Cf. also below, p. 216.

especially as regards the fixing of the basic wage, the scope and membership of trade unions, the powers of the Arbitration Court, and the regulation of hours of work.

The provisions relating to trade unions and the powers of the Arbitration Court will be discussed in other parts of this Report. It will be sufficient here to analyse briefly the clauses concerning the fixing of the basic wage and hours of work.

Under the provisions relating to basic rates of wages, the Arbitration Court was required to fix by a general order within three months of the coming into operation of the Act (i.e. by 8 September 1936) a basic rate for adult male workers employed in any industry to which any award or industrial agreement related and a separate basic rate for adult female workers so employed. The basic rate for male workers must be sufficient to enable a man to maintain a wife and three children " in a fair and reasonable standard of comfort ".

In fixing the basic rates, which may be amended at intervals of not less than six months, the Court must have regard to the general economic and financial conditions affecting trade and industry in New Zealand and to the cost of living. Whatever rates may have been fixed under awards or agreements, no adult male or female worker, unless in possession of a permit issued by the Court, in any industry covered by an award or an agreement may receive less than the current basic rates.

In connection with the fixing of a basic wage, the Act also regulates the question of hours of work. Under sections 20 to 22, the Court is directed to fix the maximum hours (exclusive of overtime) at not more than 40 per week, unless in its opinion it would be impracticable to carry on efficiently any industry to which the award relates if hours are so limited. It is further empowered to amend existing awards or industrial agreements so as to fix the maximum hours at 40, or, if that is considered impracticable, at a figure intermediate between 40 and the previous maximum. Finally, the Court is required to endeavour to fix working hours when the maximum is not more than 40 per week in such a way that no part of the working period falls on Saturday. No award fixing hours at 40 or less was to take effect before 1 September 1936.

If in any award made after the passing of the Act hours of work are fixed in excess of 40, the Court must indicate in the award the ground which, in its opinion, made impracticable the fixing of a maximum of 40 hours.

Where an existing award or agreement is amended so as to reduce the maximum hours of work, any rates of pay fixed in the award or agreement must, if necessary, be increased, either directly by the Court or indirectly by the operation of the order, so that the ordinary rate of weekly wages of any worker bound by the award or agreement may not be reduced by reason of the reduction made in the number of working hours.

Fixing of Collective Labour Conditions by the Labour Courts

The institution of compulsory appeal to the labour courts in *Italy* — as in other countries with a corporative system [1] — is a logical sequence of the organisation of conditions of work through officially recognised bodies placed under State control.

The Italian Senate's report on the Bill for the legal regulation of collective labour relations pointed out in its time that as the State did not allow the various classes and groups of producers to take action in the defence of their own interests and as on the other hand it did not feel it could remain indifferent to industrial disputes but should rather act as a mediator between the various classes and groups of producers in the interests of social justice, it had a moral and political obligation to set up permanent labour courts which would act as direct representatives of the State and, consequently, in the general interests of the community.

Thus, according to section 13 of the Act of 3 April 1926 relating to the legal regulation of collective labour relations,[2] all disputes connected with the regulation of collective relations which are concerned with the carrying out of collective agreements or other regulations in existence, or with demands for new conditions of employment, come within the jurisdiction of the courts of appeal acting as tribunals for such matters.

It will be remembered that the court of appeal competent, under section 13 of the Act, to settle collective labour disputes, is composed of three magistrates — one a president of a section of a court of appeal and the other two councillors of the court of appeal — together with two citizens who are experts in problems of production and labour.[3]

[1] Cf. *Legislative Series*, 1934, Por. 3

[2] Cf. *Legislative Series*, 1926, It. 2.

[3] For information on the composition and working of the labour courts, cf. *Freedom of Association*, *op. cit.* Vol. IV, Italy, pp. 70 *et seq*, and *Conciliation and Arbitration in Industrial Disputes*, *op. cit*, Italy.

As to the criterion to be observed in establishing conditions of labour, the Act stipulates that the court of appeal, acting as a tribunal for labour matters, is to prescribe new conditions of labour " in conformity with the principles of equity . . . , adjusting the interests of employers and the interests of employees and in each case having regard to the superior interests of production " (section 16).

Furthermore, the Labour Charter [1] (sections XI-XXI) and the Royal Decree of 6 May 1928 [2] lay down a certain number of minimum conditions of employment which must be established by collective agreements and consequently by the labour courts (cf. below : " Contents of Collective Agreements ").

In connection with wages, section XII of the Labour Charter requires the industrial judge to adopt a threefold criterion which will take account of social and economic requirements and possibilities of output. This section reads as follows :

> The adjustment of wages to the normal requirements of life, the possibilities of production and the output of labour shall be ensured by means of trade association action, the conciliation work of corporative organs, and the awards of the labour courts.

The Charter adds, moreover, that the fixing of wages is not to be governed by any general rules and must be based on agreement between the parties to collective agreements.

Thus, contrary to the Australian system of compulsory regulation, Italian legislation does not attempt to fix the actual amount of wages in advance.

It is also to be noted that as a result of the organisation of the corporations (cf. Part III of the present Report), the social and economic standards on which the judge can base his award can be defined with the greatest accuracy.

Judicial proceedings cannot be taken until the federation or confederation to which the trade association belongs, or the corporation, has attempted to secure an amicable settlement of the dispute, and such attempt has failed.

It is thus clear that the legislator, while providing for recourse to the labour courts in the last resort and as a final instance of appeal, has endeavoured to leave the way open to voluntary conciliation and arbitration. And it appears from an enquiry carried out by the Ministry of Corporations into the working of

[1] Cf. *Legislative Series*, 1927, It. 3.
[2] Cf. *Legislative Series*, 1928, It. 3.

conciliation machinery and the labour courts in Italy,[1] that the courts have been called upon to settle but a very small number of disputes although those few concerned important questions of principle and legal interpretation.

Similarly, in *Greece* compulsory arbitration was recently introduced by an Act of 16 November 1935. Under section 8 of this Act the arbitration authorities, when fixing wages, must take into account the social and economic needs of the undertakings involved in the dispute, their economic and technical capacity, the level of wages paid in relation to the cost-of-living index number, and also general economic interests.

The new *German* National Labour Act [2] also contains provisions for the compulsory regulation of conditions of labour and wages. Section 32, paragraph 2, of the Act states that if it is urgently necessary for the protection of the workers in a given group of undertakings in a given area, the Labour Trustee concerned may, after consulting a committee of experts, issue collective rules in writing, the terms of which are binding as standards for the classes of employment covered. But as here again the supervision of conditions of labour and wages is closely bound up with the control of economic life, a detailed study is made of the whole question in the third part of this volume.[3]

[1] Cf. *International Labour Review*, Oct. 1934 " The Settlement of Labour Disputes in Italy ".

[2] Cf. *Legislative Series*, 1934, Ger. 1 and 6, and *International Labour Review*, April 1934 : " The New German Act for the Organisation of National Labour ".

[3] Cf. later, under " The Place of Collective Agreements in the Economic Structure of the Community "

B. — *THE LEGAL EFFECTS OF COLLECTIVE AGREEMENTS*

CHAPTER I

CONDITIONS OF VALIDITY OF COLLECTIVE AGREEMENTS

All the laws concerning collective agreements require certain conditions of substance and of form to be fulfilled before the agreements are valid.

Conditions of Substance

The conditions of substance may concern either the purpose of the agreement or the status of the contracting parties.

With regard to the purpose of the agreements, it is sufficient to point out that in principle they are subject to the same restrictions as individual contracts of employment : lawful cause and purpose, possible advantages, conformity with public policy and the requirements of morality.

As to the status of the contracting parties, the legislation lays down — usually in very exact detail — the conditions to be complied with by the parties to collective agreements (trade unions, joint committees, corporative organisations, etc.) or by the institutions responsible for regulating collective agreements (compulsory arbitration procedure, labour courts, etc.). As these have already been dealt with in connection with the methods of drawing up collective agreements, which were summarised in the preceding chapters,[1] it will suffice to refer the reader to them.

[1] With regard to the conditions to be complied with by trade unions, cf. *Freedom of Association, op. cit.*

With regard to the conditions governing the constitution and working of conciliation and arbitration schemes, cf. *Conciliation and Arbitration in Industrial Disputes, op. cit.*

Conditions of Form

It is for the benefit of the parties themselves that the legislation on collective agreements insists on stricter conditions of form for the conclusion of such agreements than are required by ordinary law in the case of individual contracts of employment.

The first condition laid down by the laws of every country (thus rendering an enumeration of countries superfluous) is that a collective agreement is not valid unless drawn up in writing. This applies to every type of collective agreement : the agreements concluded by industrial associations, the decisions of joint committees, arbitration awards, the decisions of labour courts, the orders issued by corporations and the collective rules promulgated by labour trustees.

No matter how collective agreements may be concluded, the important thing always is that the rights and obligations resulting from them for the contracting parties and for all the workers covered should be clearly and unequivocally stated.

A second condition of form is that collective agreements must be lodged, and usually registered, with some authority : the probiviral councils or the conciliation magistrate *(juge de paix)* in France,[1] the conciliation and arbitration authorities in Mexico,[2] in Norway [3] and in Austria,[4] the chambers of labour in Rumania,[5] the factory inspectors in Chile[6] and in Venezuela, the industrial registrar in Australia,[7] the prefect and the Ministry of Corporations in Italy,[8 9] the Ministry of Labour or of Social Welfare in Latvia,[10] Finland,[11] Brazil,[12] Greece,[13] France,[14] and in the Irish Free State[15]. In all these cases, the collective agreement must be deposited, and in some cases registered, before it can come into force. In this way, those concerned can at any time make themselves acquainted with the obligations by which they

[1] Cf. *Legislative Series*, 1919, Fr. 1, sec. 31 *(c)*.
[2] Cf. *Legislative Series*, 1931, Mex. 1, sec. 25.
[3] Cf. *Legislative Series*, 1927, Nor. 1, sec. 3 (1).
[4] Cf. *Legislative Series*, 1920, Aus. 22, sec. 13.
[5] Cf. *Legislative Series*, 1929, Rum. 2, sec. 107.
[6] Cf. *Legislative Series*, 1931, Chil. 1, sec. 19
[7] Cf. *Legislative Series*, 1928, Austral. 2, sec. 76.
[8] Cf. *Legislative Series*, 1926, It. 2, sec. 10.
[9] Cf. *Legislative Series*, 1928, It. 3.
[10] Cf. *Legislative Series*, 1927, Lat. 3, sec. 2.
[11] Cf. *Legislative Series*, 1924, Fin. 2, sec. 2.
[12] Cf. *Legislative Series*, 1932, Braz. 6, sec. 2.
[13] Cf. *Legislative Series*, 1935, Gr. 7. sec. 2.
[14] Cf. *Legislative Series*, 1936, Fr. 7, sec. 2 (31 c).
[15] Cf. *Legislative Series*, 1936, I.F.S, 1, sec. 50.

are bound. This second guarantee is thus directly complementary to the first one, by which agreements must be in writing; its purpose is usually merely to ensure publicity and knowledge of the agreement.

In some countries, however, collective agreements have to be examined before being registered, and thus registration — and the application of the agreement — may be refused if the statutory conditions are not fulfilled.

For example, the Order of 2 February 1923[1] in the U.S.S.R., concerning the registration of collective agreements, prescribes that no collective agreement can be registered if it contains clauses involving conditions of work less favourable than those laid down by law or by regulations.

Similarly, the Italian Legislative Decree of 6 May 1928[2] concerning the lodging and publication of collective agreements makes registration conditional not only on certain statutory formalities but also on the substance of the agreement being approved, and more especially on its conformity with the principles of sections XIV to XX of the Labour Charter[3] (cf. analysis of these provisions below, under "Contents of Collective Agreements"). Thus, under legislation which contains special guarantees as to the contents of agreements, the formality of registration enables the authorities to see that these guarantees are actually enforced.

A third condition of form is the publication of collective agreements. This is required wherever the agreements apply not only to workers who are members of the contracting trade unions but also to non-unionists (cf. below, "Scope of Collective Agreements").

Thus, collective labour agreements in Italy, Portugal and the U.S.S.R., and collective agreements that are declared binding on third parties in Austria, Brazil, Canada, Czechoslovakia (textile industry), Germany, Great Britain (cotton industry) and Mexico, the decisions of joint boards in the Netherlands and Spain, Australian arbitration awards, the decisions of the labour courts in Italy and Portugal, the orders of the corporations in Italy, Austria and Portugal and the collective rules issued by the labour trustees in Germany must all be published in the official bulletin of the Ministry of Labour or in the official collection of legislative enactments.

[1] Cf. *Legislative Series*, 1923, Russ.
[2] Cf. *Legislative Series*, 1928, It. 3.
[3] Cf. *Legislative Series*, 1927, It. 3.

CHAPTER II

LEGAL NATURE AND SCOPE OF COLLECTIVE AGREEMENTS

All the laws concerning collective agreements — save only the new German National Labour Act, which prescribes that collective rules will be issued by the labour trustees of their own motion — contain two sets of regulations, differing in their nature, scope and purpose :

(1) regulations concerning the rights and obligations of the parties to collective agreements : trade unions, joint committees, corporative organisations, groups of workers on conciliation or arbitration boards ;
(2) regulations concerning the conditions of work of the persons represented by the parties to collective agreements.

The regulation of the relationships between the parties to collective agreements is not an end in itself ; it is a method of fixing working conditions, serving merely as a framework for the regulations of conditions of employment, which is, after all, the essential aim and object of collective agreements. The two sets of regulations must therefore be studied separately.

I. — Regulation of Relations between Parties to Agreements

The legal nature of the relations between the parties to collective agreements obviously differs according to the methods of drawing up the agreements, which were analysed in Part I (cf. above, p. 77). It may be noted again that these relations are of a purely contractual nature in voluntary systems, since the rights and obligations involved are those arising out of the ordinary law of contract and out of the engagements freely entered into by the parties. The relations are of a legal nature in compulsory systems, for their rights and obligations are imposed on the parties with the force of law.

The scope of the various methods will be discussed later in connection with the scope and enforcement of collective agreements and the penalties for contraventions.

II. — Regulation of Working Conditions by Collective Agreements

Whereas the legal value of the rules governing the relations between the parties to collective agreements vary according to the system, the value of the regulations governing the working conditions of the persons covered by the agreements is the same in every legislation. It will therefore be possible to give a general survey without referring in each instance to the provisions of the various laws, which vary only on points of detail.

All collective agreements, in so far as they regulate working conditions, lay down in advance the conditions of employment that must form part of every individual contract of employment concluded between persons bound by the collective agreements.

It follows from this definition that the collective agreement is not itself a contract of employment between the parties that sign it, for neither the employers' associations nor the workers' unions owe wages or services respectively to each other ; the collective agreement involves the contingent regulation of the conditions of employment of third persons represented by the parties to the agreement, and these conditions do not come into force until, at some later date, individual contracts of employment are concluded.

Departure from the Provisions of Collective Agreements Prohibited

It is clear that such a system of regulation is valueless unless the persons to whom it is meant to apply are bound to observe it. Consequently — and this shows the fundamental unity of all systems of collective labour agreements — all the laws concerning collective agreements, whether these agreements are concluded between employers' associations and trade unions or laid down by occupational or corporative institutions, by arbitration awards or by collective rules, prohibit individual contracts of employment from containing provisions that are not in conformity with the collective agreement ; they attach to this prohibition a dual minimum legal effect : [1]

[1] It is a minimum effect, for it will be seen later (cf. under " Application of Collective Agreements ") that several laws supplement this civil guarantee by penal guarantees.

(1) Individual contracts of employment concluded by persons covered by the collective agreement are null and void in so far as they are not in conformity with the collective agreement. This nullity is absolute and automatic, but, in contrast to ordinary law, it affects only the clauses that are contrary to the agreement, leaving the rest of the contract valid. For to invalidate the whole contract of employment would be quite contrary to the purpose of collective agreements, which is to enforce uniform working conditions in a given industry or occupation ;

(2) The clauses that are not in conformity with the collective regulations are automatically replaced by the corresponding clauses of the latter. The first guarantee — the mere invalidation of the clauses in question — would not be sufficient to secure conformity between individual contracts and the collective regulations , it must be supplemented by the automatic replacing of the invalidated clauses by the corresponding ones of the collective agreement — that is, even against the express will of the parties.

It should be noted that this dual effect applies not only to contracts concluded after the collective agreement came into force, but also to those that were already in existence when it was concluded and that fall within its scope. Moreover, the dual effect remains in operation even after the collective agreement has lapsed whenever the parties have agreed to provisions that, by their nature, take effect only when the collective agreement expires, such as radius agreements, retiring allowances, etc.

Waiver of the Rights conferred by Collective Agreements

A final problem that arises in connection with the prohibition of contracts that do not conform to the collective agreement is whether a person may subsequently waive any of the rights conferred by that agreement. In other words, can a worker claim arrears of wages to which he is entitled according to the collective agreement but to which he tacitly or expressly relinquished his claim ?

The question is obviously of great practical importance, especially in periods of depression, when workers are often faced with the alternative of giving up a fraction of their wages or losing their jobs.

Although the legislation on collective agreements does not always deal with the matter, this lacuna has frequently been made good by the rulings of the courts. In *Germany* and in *Italy*, for instance, the courts have held waivers to be incompatible (whenever their purpose was to evade certain obligations) with the principle that collective agreements may not be modified by individual agreement. This is particularly the case if the waiver, even when explicit — as by signing a receipt " in full settlement " — is made or is presumed to have been made under economic pressure exerted by the employer on the worker in his employment. It may be added that a recent decision of the German Federal Labour Court (13 July 1935) declared any waiver, even when explicit and voluntary, of the rights conferred by collective rules to be illegal in virtue of the National Labour Act of 20 January 1934.

Similarly, in *Australia* (Commonwealth and States) the waiver of any of the stipulations of an arbitration award, except in so far as permitted by the award itself, is held to be illegal. The same holds good in *Spain* with regard to the decisions of the joint boards, in *Great Britain* (Cotton Manufacturing Industry Act), in *Canada* (Industrial Standards Acts of Alberta and Ontario and Collective Agreements Act of Quebec) and in general in all countries in which collective agreements or collective rules have the force of law.

The solution thus given in certain countries to the problem of waiving rights conferred by collective agreement defines and strengthens the principle of no departure from the terms of these agreements by declaring void any agreements that would, even indirectly and subsequently, endanger the rights granted by the collective agreement.

Exceptions to the Principle

There are, however, two exceptions to the principle of no departure from the terms of collective agreements, the nature and scope of which has just been described.

(1) All laws concerning collective agreements permit departures from the terms of such agreements when they are more favourable to the worker ;

(2) All the laws also permit departures that are expressly authorised and provided for by the collective agreement itself.

(a) *Departures favourable to the workers.* — Individual agreements modifying the provisions of collective agreements are, as a rule, valid when they change the worker's conditions of employment to his advantage. Thus, as in the case of protective labour legislation, the prohibition of modifications by agreement is operative only for the benefit of the workers and never to their detriment. The reason is that the collective regulation of conditions of employment is presumed to lay down minimum conditions on which the parties to collective agreements are naturally left free to improve, if only in order to enable them to make remuneration proportionate to the efficiency of the individual worker within each category or wage group. Under schemes of compulsory arbitration, the distinction between the minimum living wage and the secondary wage serves the same purpose.

The right which the parties to individual contracts of employment thus possess of modifying the provisions of the collective agreement in the worker's favour is, of course, merely a right and not an obligation. Thus if an employers' association which is a party to a collective agreement rules that its members must consider the conditions of work laid down in the agreement as being maximum conditions that must not be exceeded, it would not thereby contravene the terms of the collective agreement. The situation would be different if the collective agreement expressly stated that the conditions it contained were to be considered as a minimum.

Although most laws accept the principle of departures from collective agreements when they are to the workers' advantage, some of them permit the parties to prohibit such departures. If a clause prohibiting such departures is actually included in an agreement, the consequence is that the conditions of employment it prescribes, which theoretically represented a minimum, become *ipso facto* a maximum, applying uniformly throughout the occupation or industry covered by the agreement. Such a clause could be met with only in collective agreements applying to industries or occupations in which working conditions were very similar or practically identical, and the agreements would require to regulate in great detail the conditions of remuneration of various classes of wage-earners.

The laws on this subject do not define what is meant by a departure to the worker's advantage, the interpretation of this concept being left to the courts. They, with a view to preventing the protective provisions of collective agreements from being

indirectly evaded, place a dual restriction on these departures in favour of the workers. In the first place, certain clauses, especially those concerning hours of work, are considered as measures of social protection that cannot be modified by individual agreement, no matter what advantages the change might bring. Thus an agreement to prolong hours of work beyond the figure stipulated in the collective agreement (but within the limits of the statutory hours, of course), accompanied by an increase in wages, is not deemed to be a departure to the worker's advantage even if he feels himself to be the gainer.

In the second place, when the law-courts have to interpret agreements departing from the collective agreement they always adopt the principle that the collective interests of the trade must come before the personal interests of an individual worker. In other words, agreements to modify the terms of a collective agreement must not be interpreted simply in the light of the personal advantage of the parties concerned, but in the light of the collective interests of all the persons to whom the collective agreement applies.

(b) *General exceptions permitted by collective agreements.* — The right to depart from the terms of a collective agreement for the benefit of the worker really accentuates the fact that these agreements are essentially protective measures for the workers.

But one of the fundamental differences between collective agreements and ordinary laws is that the legislation authorises the parties to collective agreements — or, in their stead, arbitration boards, judicial bodies or the public authorities responsible for regulating conditions of employment collectively — to permit general exceptions to the principle that collective agreements are sacrosanct.

The view taken has been that although it was desirable to forbid the parties to individual contracts to enter into any stipulation that was contrary to the collective agreement and less favourable to the worker — so as to ensure the full effectiveness of the collective regulations and, if necessary, to protect the workers against their own weakness — there was no need for the same restrictions in the case of parties to collective agreements (trade unions, etc.), bargaining on an equal footing, able to appreciate the desirability of the measure in question and able also to supervise its application.

The legal effect of the measure is this : within the limits of

the powers conferred on them by the collective agreement, the persons to whom it applies recover their freedom of contract and can agree to conditions of employment that may be even less favourable than those specified in the agreement. Here again — unless there is any express stipulation to the contrary — there is no obligation to depart from the provisions of the collective agreement ; it is simply that such a departure is permitted to the parties to individual contracts of employment and not to the employer only.

Under compulsory systems, this power to grant exceptions to the provisions of collective agreements is conferred on the judicial or political authority responsible for collective agreements.

The social effect of the measure is that the parties to individual contracts of employment are enabled to take account of the situation and needs of particular undertakings to which the collective agreement applies.

Here again, then, the aim of the legislator has been to make collective agreements as elastic as possible.

It will be seen later (cf. below, " Duration of Collective Agreements ") that the procedure for the revision of collective agreements offers further possibilities of adapting working conditions to the changing needs of industry.

Position of Collective Agreements under Labour Law

In view of the fact that departure from the terms of collective agreements is inadmissible, as is the case also with legislative provisions, the texts of these agreements — in so far, that is, as they regulate conditions of employment for the persons to whom they apply — have the same force as legislative texts and restrict in the same way the freedom of contract of the parties to them.

From this point of view collective agreements are in every way analogous to protective labour legislation, but they must be considered as special laws governing a certain industry or occupation, limited in their duration and promulgated — as a rule — by the parties and not by the legislative authorities.

Since collective agreements, within the limits of their scope, have thus been assimilated to labour legislation, the question of the relationship between the agreements and the legislation naturally arises. This problem will have to be studied as a whole later, in connection with the possibility of using collective agreements as instruments for regulating certain conditions of employ-

ment internationally. For the moment it will suffice to answer, in the light of the existing legislation, a few of the questions that arise concerning the legal scope of collective agreements : (1) can collective agreements *ipso jure* depart from the provisions of labour legislation ? (2) to what extent are such departures authorised by labour legislation itself ? (3) what part can collective agreements play in the application of labour legislation ?

(a) *Departures* ipso jure *from labour legislation by collective agreement.* — It is a general principle of labour legislation that agreements, whether individual or collective, may not depart from the imperative provisions of social legislation except in so far as they are more favourable to the workers. Moreover, such agreements become null and void, and those who enter into them are liable to the penalties prescribed for infringements of the law.

As a general rule, then, even if the text of the law makes no provision on the subject, laws take precedence over agreements just as collective agreements, as was shown above, take precedence over individual contracts of employment. Some laws indeed expressly lay down the order of legal precedence of the various types of labour law. An example is to be found in *Spanish* legislation, which recognises, in addition to labour legislation in the strict sense, other methods for the collective regulation of labour conditions, such as the orders of joint boards, collective agreements and collective contracts.

Sections 9 to 12 of the Contracts of Employment Act of 21 November 1931,[1] which deal with the restriction of contractual freedom, define the respective status of each of these methods of regulation as follows :

11. " Employment regulations " *(bases de trabajo)* shall mean the rules adopted by the joint juries or the joint committees legally recognised for that purpose which lay down the minimum conditions as to protection for employees with respect to wages, hours of work, rest periods, guarantees of permanent employment, provident schemes and all other measures which may be specified in the contract of employment.

The employment regulations shall not lay down any condition less favourable to the employees than those specified in the statutory provisions.

12. A " collective agreement " *(pacto colectivo)* respecting the conditions of employment shall mean an agreement concluded between

[1] Cf. *Legislative Series*, 1931, Sp. 14.

an association or associations of employers and an industrial association or associations of employees, legally constituted for the purpose of establishing the standards which must be observed in contracts of employment (whether individual or collective) concluded between employers and employees in the branch, trade, employment or occupation to which both parties belong in the district concerned.

Collective agreements respecting conditions of employment shall not include conditions which are less favourable to the employee than those laid down in the statutory provisions and the regulations adopted by the legally recognised joint juries or joint committees.

But there are certain exceptions to the precedence taken by labour laws over collective agreements, more especially in countries in which the collective regulation of labour conditions by collective agreement is the predominant method.

In *Italy*, for example, some of the courts of first instance had ruled that collective agreements could, in their own sphere, lay down provisions contrary even to the express principles of labour laws. But the Court of Appeal reversed this decision and upheld the principle that collective agreements were not entitled to depart from more favourable standards laid down by law.[1] On the other hand, the courts have clearly asserted the precedence of collective agreements over customary practices, even when the latter are recognised by some labour law and hence enjoy, to some extent, the legal status of that law.

This problem arose in the following manner. Section 17 of the Italian Legislative Decree of 23 November 1923 concerning private contracts of employment states that the provisions of the legislation apply, notwithstanding any agreement to the contrary, except when there is an individual agreement or local usage that is more favourable to the employed person. The courts, taking the law as being imperative as a matter of public policy, held that it was quite impossible to make any departure from commercial usages by individual contracts of employment, since the employed person might have signed such an agreement under stress of necessity. The same arguments were advanced in support of the view that collective agreements could not run counter to established usage. But on the other hand it was argued that in the field of collective labour relationships the problem took on quite a different aspect and that, consequently, departures from custom by collective agreement were entirely permissible.

[1] Cf. *International Survey of Legal Decisions on Labour Law*, 1929, Italy, Nos and 7 and note ; 1930, Italy, Nos. 7 and 37 ; 1931, Italy, No. 30.

This view was upheld by the Court of Appeal on 12 January 1933 ; the reasons given for the decision included the following :

The collective regulation of labour conditions is based on the legal and political principles summed up in section IV of the Labour Charter, which states that the individual interests of employers and employees must be subordinated to the higher interests of production. This principle implies that in exceptional cases the benefit of some local custom may be withdrawn from certain groups of employees while retaining its full legal force in respect of other employees whose conditions of work and of production do not call for any such sacrifice.

Thus, in Italy, collective agreements may, in principle, decree a departure from customary practices, even when the latter are more favourable and are recognised by law

The question arose in still another form in *Australia*, both in the separate States and in the Commonwealth. Most of the arbitration laws, it will be recalled, empower the industrial courts to regulate various matters, such as hours of work, apprenticeship, family allowances and placing, which, in other countries, are dealt with by labour legislation, the function of collective agreements then being merely to fill gaps in the legislation or to lay down collective regulations more favourable than the legal minimum. It is thus natural that the laws should authorise the industrial arbitration courts to depart from the rules which they themselves draw up and have to enforce.[1]

The same powers are naturally given to the Commonwealth authority responsible for preventing and settling disputes of competence between the State courts and the Federal Court and giving a ruling in case of conflicting awards.

The Commonwealth Conciliation and Arbitration Act [2] therefore prescribes a number of measures (orders restraining the State authorities from dealing with a dispute, invalidation of decisions contrary to the Federal award, etc.) to ensure that the awards of the Federal Court will have complete precedence, not only over State awards, but also over State legislation. Section 20 of the Act reads .

If it appears to the Court that any State industrial authority is dealing or about to deal with an industrial dispute, with part of an industrial dispute or with a matter which is provided for in an award

[1] For an instance of the regulation of one of the most important of working conditions by industrial arbitration, cf. *International Labour Review*, Vol. XXVI, No. 1, p. 51 and No. 3, p. 364: "The Standard Working Week in Australia ", by O. de R. FOENANDER

[2] Cf. *Legislative Series*, 1928, Austral. 2.

of the Court or is the subject of proceedings before the Court, the Court may make such order restraining the State industrial authority from dealing with that dispute or any part thereof, or with that matter, as the Court thinks fit, and thereupon the authority shall, in accordance with that order, cease to proceed in the dispute or part thereof or in that matter.

Any award, order or determination of a State industrial authority made in contravention of an order made under this section shall, to the extent of the contravention, be void.

Sections 30 and 30 A of the Act state :

When a State law or an award order or determination of a State industrial authority is inconsistent with, or deals with any matter dealt with in an award or order lawfully made by the Court, the latter shall prevail, and the former shall, to the extent of the inconsistency, or in relation to the matter dealt with, be invalid.

Any person interested may apply to the Court for a declaration that a State law dealing with an industrial matter or an award, order or determination of a State industrial authority, is invalid under section 30 of this Act.

These are a few instances of collective agreements or arbitration awards being permitted, as a matter of course, to depart from the terms of labour legislation ; they constitute exceptions to the rule that labour laws take precedence over collective agreements, but the rule remains in most countries one of the fundamental principles of labour law.

(b) *Departures authorised by the legislation.* — Although the legislative authorities may not wish to give the parties to collective agreements power to draft or to amend social legislation, they very often use collective agreements as a means of making the legislation more elastic. The classic example is to be found in hours-of-work legislation in which the parties are authorised to depart by collective agreement from some of the imperative provisions of the law.

For instance, the *German* Order of 14 April 1927,[1] as amended by the Act of 26 July 1934 [2] concerning hours of work, authorises, subject to certain conditions, departures from the statutory hours of work to be laid down by collective agreement and — since the National Labour Act of 20 January 1934 came into force — by collective rules.

According to section 5 of the Act, if working hours are extended

[1] Cf. *Legislative Series*, 1927, Ger. 2.
[2] Cf. *Legislative Series*, 1934, Ger. 13

by collective agreement (collective rules) beyond the statutory limits, the provisions of the collective agreement (rules) will then apply, instead of the statutory provisions, to the employment of the workers on whom the collective agreement is binding. But certain guarantees are added, for it is stipulated that if a collective agreement (or collective rules) contains provisions relating to hours of work which are incompatible with the principles of the legislation for the protection of workers, in particular with reference to the need for protection of women and young persons, the supreme State authority may challenge these provisions and if they are not altered within a period fixed by the authority, may itself issue regulations concerning the permissible duration of working hours. Section 9 also fixes a maximum of ten hours in the day that may be stipulated by collective agreement. Thus the departure from the statutory hours is permitted only subject to the supervision of the authorities and to the observance of limits fixed by the law itself.

Other examples of departures from legislative provisions concern jurisdiction in labour matters. Quite a number of laws concerning labour courts (which, theoretically, are alone competent to deal with disputes arising out of individual contracts of employment or apprenticeship) recognise the validity of arbitration clauses that remove disputes from the competence of the labour courts, provided that they are based on definite arrangements mentioned in the collective agreement.

It may also be noted that conciliation and arbitration bodies appointed by agreement between the parties generally take precedence over official conciliation and arbitration systems.

(c) *Application and adaptation of labour legislation by collective agreement.* — The commonest way in which collective agreements are made to serve the ends of the legislation is undoubtedly their use as an instrument for the application or adaptation of labour legislation. It would be practically impossible to enumerate all the legislative provisions that refer to or in some way or other depend on the support of collective agreements : legislation concerning the minimum wage, works regulations, notice of dismissal, the weekly rest, the closing of commercial or industrial establishments, hours of work, workshop discipline, etc.

It must suffice here to note one particular trend, which is to lay down the principle of some proposed social reform in the legislation and leave its application to collective agreements.

For instance, the *French* Act of 23 April 1919 concerning the eight-hour day lays down the principle and states that the public administrative regulations issued under the Act must refer to the collective agreements, where such exist, drawn up by the associations of employers and workers in the industry or occupation concerned. Thus the provisions of these agreements are directly incorporated in the legislation and become applicable, in the same way as the legislative provisions, to all persons falling within the scope of the Act.

According to the report on the subject submitted to the National Economic Council in 1934,[1] six million wage earners were at that date covered by the eight-hour day, primarily on the basis of a system of collective agreements.

The part played by collective agreements under the French Act of 29 December 1923 concerning the weekly closing of industrial and commercial establishments is still more important, for the application of the Act is conditional on the conclusion of agreements between the employers' and workers' organisations concerned.

[1] Cf. CONSEIL NATIONAL ECONOMIQUE : *Les conventions collectives de travail.* aris, Imprimerie nationale, 1934.

CHAPTER III

THE CONTENTS OF COLLECTIVE AGREEMENTS

In the survey of the *de facto* situation of collective agreements (cf. Part. I, pp. 12 *et seq.*), the main clauses that go to make up these agreements were briefly analysed. The legal value of these clauses must now be studied.

The distinction made with regard to the legal nature of collective agreements — as regulating conditions of employment on the one hand and regulating the relations between the contracting parties on the other (cf. the preceding chapter) must be made again with regard to their contents. Indeed, it is here that the full significance of the distinction becomes apparent. The clauses specifying the conditions of employment of persons covered by the agreement and those defining the rights and obligations of the contracting parties differ not only in respect of the persons to whom they apply but also in respect of their legal nature and the sanctions for their enforcement.

In the first place, the two sets of clauses differ with regard to the persons to whom they apply, for the persons who enjoy rights or are under obligations in virtue of the provisions governing conditions of employment are, primarily, the employers and workers who are parties to the individual contracts of employment concluded under collective agreements, whereas the parties affected by the rights or obligations conferred or imposed by the clauses concerning the relations between the contracting groups are, primarily, the employers' and workers' organisations.

In the second place, they differ as to their legal nature, for the dual legal effect of collective agreements — in the prohibition of contracts departing from the collective agreement and the automatic substitution of the appropriate clauses of the latter for the offending clauses of the former — resides only in the clauses that regulate working conditions, whereas those governing the relations between the parties — apart from compulsory systems, which will be mentioned later — are binding on the contracting

organisations only within the limits of the agreement and only in so far as they were freely accepted by both parties. In other words, no matter what the system may be, the clauses regulating working conditions have the imperative force of law for the persons to whom the collective agreement applies, whereas the clauses concerning the relations between the parties to the agreement have simply the force of a contract between the signatory bodies.

The two sets of provisions also differ as regards the legal sanctions for their enforcement, for it will be shown later, in connection with the enforcement of collective agreements, that disputes arising out of the interpretation or application of these clauses are subject to different procedure and are heard by different bodies.

It may be added that in systems making provision for the extension of collective agreements to third parties (cf. below, " Scope of Collective Agreements ") only the provisions governing conditions of employment are extended beyond their strict legal application ; the clauses concerning the rights and obligations of the contracting bodies are not affected by the extension but remain in their original form.

The two sets of clauses are of course closely bound up with each other and may also impose obligations simultaneously on the parties to a collective agreement and the parties to individual contracts of employment. It is then a matter for the courts to decide in each particular case whether the person (or body) to whom a certain right (or obligation) applies is the individual employer or worker, or the contracting organisation, or both at once.

Moreover, as will be seen later in connection with the enforcement of agreements, the fact that the laws of many countries enable industrial associations to take legal proceedings not only in the defence of their own interests but also on behalf of their members ensures that the proper legal sanctions will be taken in every case to enforce the rights laid down by collective agreement.

This first distinction was based on the legal value of the different clauses of collective agreements , a second one depends on the organisation of the system of collective agreements. In voluntary systems, the parties are in general entirely free to settle the contents of collective agreements, whereas in compulsory systems part or the whole of these contents may be prescribed by the authorities.

The following survey of the contents of collective agreements

will therefore deal first of all with systems in which the contents are fixed by voluntary negotiation and then with systems in which they are prescribed by the authorities. For the first type it will suffice to give a few examples illustrating the difference between the clauses determining the conditions of employment of the workers and those defining the rights and obligations of the contracting parties (for details of the system, the reader is referred to Part I of this Report). In the case of the compulsory systems, the two sets of clauses will again be examined separately in the same order.

1. — Contents settled by Voluntary Negotiation

The freedom of the parties to regulate working conditions by collective agreement, which is theoretically unlimited in systems of voluntary negotiation, is of course subject to the restrictions imposed by the provisions of social legislation : general legislation on the individual contract of employment, private contracts of service, apprenticeship contracts, etc., and special laws concerning certain social matters, such as the minimum wage, guarantees of wage-payment, hours of work, holidays with pay, public holidays, notice of dismissal, workshop and service regulations, etc. In all these cases, as has been shown, the relative authority of labour legislation and collective agreements prevents the parties to the latter from agreeing to conditions less favourable to the workers than the statutory ones.

Voluntary Regulation of Working Conditions by Collective Agreements

Subject to that general reservation, the various clauses that actually regulate working conditions may now be studied.

The criterion for distinguishing between the two types of clauses is naturally to be found in the fact that only the clauses governing conditions of employment are intended and suitable for incorporation in the individual contracts to be concluded subsequently between the employers and workers covered by the collective agreement (a clause concerning wages, for instance), whereas clauses dealing with the relations between the contracting parties cannot appropriately be incorporated in individual contracts (for example, a clause concerning the institution of an employment agency).

This means that the provisions of the first type are such as

by their nature, might be stipulated by the parties to an individual contract of employment. They are therefore of four main kinds :

Clauses defining the employer's obligations under the individual contract of employment ;
Clauses defining the worker's obligations under the individual contract of employment ;
Clauses concerning the termination of the contract of employment ;
Clauses concerning the organisation of individual relationships and the settlement of individual labour disputes.

The employer's obligations. — The main obligation of the employer that is specified in the collective agreement is, of course, the payment of wages. On this subject it may contain very detailed provisions concerning such points as the amount of the remuneration, the principles governing it (time rates or piece rates), its components (all sorts of allowances, bonuses and shares in profits), measures to guarantee its payment, etc.

In connection with the fixing of piece rates — which is of special importance to the workers, since a cunningly contrived system of piece rates over which they had no control could destroy the whole value of wage-fixing by collective agreement — it should be noted that collective agreements may prohibit this form of remuneration, or permit it only subject to certain conditions, regulate its application, subject it to the supervision of joint committees, guarantee a minimum rate of earnings that is higher by a certain percentage than the normal time rates, which are the usual basis for the calculation — in short, hedge it about with all the necessary guarantees.

In addition to this main obligation, the collective agreement may contain clauses concerning the employer's obligation to take measures to protect the worker's person and property, clauses concerning his obligation to provide the stipulated work (paying remuneration for hours of attendance even if no work is available through some fault on the employer's part, etc.), concerning holidays with pay (conditions, duration, time of year, compensation, etc.), concerning re-engagement after a strike, and so on.

The worker's obligations. — The main clauses of collective agreements concerning the worker's obligations include those requiring good faith in the performance of the agreed task (nature,

amount, work-place and, more especially, hours of work), radius clauses, clauses concerning inventors' and authors' rights, manufacturing secrets, etc.

Provisions concerning the termination of the contract. — The clauses on this point include, *inter alia*, those concerning the period of notice, the method of dismissal (in writing), the reasons for dismissal, prohibition of dismissal on account of membership of a union or being party to an agreement, restriction of the right of dismissal, etc.

Provision concerning individual relationships. — Finally, among the clauses of collective agreements governing the individual relationships between the parties to contracts of employment, mention may be made of those concerning the organisation of the work (time-table, time of beginning and stopping work, breaks, etc. ; disciplinary rules, fines, penalties, etc.) and those concerning the settlement of individual disputes.

This brief enumeration, which includes, of course, only a few typical examples, will serve to show that the regulation of conditions of employment by collective agreement may cover all the relationships between the parties to individual contracts of employment.

It must be remembered that *all these clauses are binding for the employers and workers to whom the collective agreements apply, just as a law would be, and the parties to individual contracts of employment may depart from them only when it is to the worker's advantage.*

Voluntary Regulation of the Parties' Rights and Obligations

The clauses of collective agreements dealing with the rights and obligations of the parties to such agreements are intended primarily to ensure their due application, for which the contracting organisations are mainly responsible. They may be grouped under the following heads :

Clauses concerning the enforcement of collective agreements ;
Clauses concerning the organisation of collective relations between the parties to agreements ;
Clauses concerning the establishment of joint bodies ;
Clauses concerning the engagement of staff ;
Clauses concerning the collective dismissal of workers.

Enforcement of collective agreements. — Every contract — and a collective agreement is a contract — implies that the parties must carry out the agreed terms in a spirit of good faith; otherwise the contract may be annulled or damages payable.

Consequently, even when there is no express stipulation to this effect, the parties to a collective agreement are bound to refrain from doing anything that might interfere with its loyal application and to do all they can to secure its enforcement.

From the point of view of collective relationships this means that the parties must, so long as the agreement is in force, refrain from exercising any direct or indirect pressure to bring about an amendment of the collective agreement or to endanger its existence or application, such as lock-outs, strikes, black-listing, boycotting, inciting members of associations to commit these acts, etc. It further involves the positive obligation for the parties (industrial associations, etc.) to use the means at their disposal (fines, exclusion, etc.) to induce their members to respect the agreement.

This obligation to observe in good faith the terms of the collective agreement is naturally a relative one, it applies only to the limited contents of the agreement and for such time as it remains in force. Thus, strikes, lock-outs and other forms of collective pressure in respect of other matters not dealt with by the collective agreement (e.g. a strike for higher wages when the agreement does not regulate wages), sympathetic strikes or lock-outs and defensive strikes or lock-outs for the maintenance of an agreement that has been broken by the other party are not precluded.

In addition to this obligation which is inherent in every collective agreement, the parties may agree to any clauses they consider calculated to secure the application of the agreement, such as: the undertaking to submit to conciliation or arbitration any collective dispute concerning the interpretation of the clauses of the collective agreement; the undertaking not to have recourse to measures of collective pressure, even in connection with matters not regulated by the agreement; the undertaking to maintain industrial peace even after the agreement has expired; general arbitration clauses providing that recourse will be had to conciliation or arbitration for all collective disputes concerning the renewal or alteration of agreements or the drafting of new ones; clauses concerning the contractual responsibility of the parties in the event of infringements of collective agreements: fines, guarantee funds, etc.

Clauses concerning the collective relations between the parties. — This heading covers, more especially, the various types of "trade-union clauses". The parties may agree — within the limits, of course, of legality and public policy — that they will give preference to, or even reserve employment exclusively for, trade unionists in general, or members of a given union, or (when the collective agreements are concluded by occupational groups) non-unionists.[1]

Similarly, collective agreements may make it compulsory for the employers to extend the benefits of collective agreements to workers not actually covered by them, or, on the other hand, to reserve them for members of the contracting organisations. Again, they may stipulate that trade union members must be re-engaged after a strike and that no reprisals must be taken.

Clauses concerning the establishment of joint bodies. — This heading includes the provisions of collective agreements concerning welfare bodies or insurance institutions : mutual sickness, invalidity, survivors' or unemployment funds ; pension funds, equalisation funds for family allowances, compensation for dismissal, etc. ; the establishment of trade-union or joint employment agencies ; most important of all, clauses concerning bodies for supervising the enforcement of agreements — works councils, joint committees, etc.

Clauses concerning the collective engagement or dismissal of workers. — The parties to collective agreements may stipulate that employers, when engaging employees, shall observe certain rules, more especially as regards the proportion of various groups according to criteria such as occupational ability : skilled workers, labourers, apprentices, etc. ; nationality : ratio of foreign to national workers ; sex : ratio of women to men ; age : ratio of children or young persons to adults, etc.

The agreements may also contain provisions concerning the collective dismissal of workers, stipulating certain conditions of form or of substance : written notice to be given to the associations concerned ; the work to be distributed and hours reduced before any mass dismissal takes place ; account to be taken of certain factors, such as age, length of service, occupational skill, family responsibilities, trade union membership, etc., when workers have

[1] With regard to the legality of such clauses, reserving employment for trade union members, giving them preference, or agreeing to employ only non-unionists, cf. *Freedom of Association, op. cit.*

to be dismissed ; preference to be given to former employees when business revives.

This brief enumeration of the main clauses governing the relations between the parties to collective agreements shows that the organisations are free to lay down any reciprocal obligations they may consider conducive to the smooth working of the agreement.

It should be noted that *these provisions are binding on the parties only within the limits set by the terms of the agreement signed by them.*

II. — The Contents of Agreements prescribed by the Authorities

The fact that, in the voluntary systems, the parties are left entirely free to determine the contents of collective agreements does not, of course, necessarily mean that agreements will actually be concluded to regulate working conditions in every case (e.g. if one of the contracting parties is weak, the economic situation unfavourable, etc.).

In order to avoid the possibility of social or economic instability as a result of the failure to draw up collective regulations, the legislation of some countries prescribes the contents, or part of the contents, of collective agreements.

The legislative provisions concerning working conditions will first be studied, and then those concerning the relations between the parties.

Compulsory Regulation of Working Conditions by Collective Agreements

One form of legislative intervention that is met with in quite a number of countries is for the law to enumerate certain matters that must be dealt with by the collective agreement or by some similar procedure, failing which the collective agreement is void.

For instance, section 8 of the *Italian* Royal Decree of 6 May 1928 states :

> A collective contract of employment shall not be published unless it contains definite provisions respecting disciplinary regulations, the probationary period, the rate of remuneration, the method of payment thereof, hours of work, weekly rest and (in the case of undertakings with continuous processes) annual leave with pay, the termination of the employment by the death of the employee or by his dismissal

without any fault on his part, the transfer of the undertaking, provision for the employee in case of illness, the calling up of the employee for service in the army or in the volunteer militia for national defence in conformity with the principles laid down in sections XIV to XX of the Labour Charter.

Similarly, section 34 of the *Portuguese* Legislative Decree of 23 September 1933 to promulgate the National Labour Code reads :

> Collective contracts shall lay down standards for hours of work, rules of employment, salaries or wages, penalties for breaches of the rules, the weekly rest, holidays, the conditions of the suspension or loss of employment, the period during which employment is guaranteed in case of sickness, leave for the performance of military service, the period of apprenticeship or probationary period for new employees, and the contributions of employers and wage-earning or salaried employees to the provident funds of trade unions.

Again, section 27 of the *German* National Labour Act of 20 January 1934 stipulates that the following conditions of employment must be included in the establishment rules (which have taken the place of the former works agreements) :

1. The beginning and ending of the normal daily hours of work and of the breaks ;
2. The times for the payment of remuneration and the nature thereof ;
3. The principles for the calculation of jobbing or bargain work, if work is done on a job or bargain basis in the establishment ;
4. Regulations for the nature, amount and collection of fines if provision is made for them ;
5. The grounds on which an employment can be terminated without notice, in cases where this does not rest upon statutory grounds ;
6. The utilisation of remuneration forfeited by the unlawful termination of an employment, in cases where the said forfeiture is prescribed in the establishment rules or contract of employment in pursuance of statutory provisions.

Section 32 of the same Act empowers the labour trustees to lay down guiding principles for the tenor of establishment rules and to issue, *ex officio*, collective rules prescribing minimum conditions of employment for the protection of the persons employed in a group of establishments within the territory allocated to each trustee. The collective rules take the place of the former collective agreements.

The compulsory arbitration courts in the Commonwealth and the various States of *Australia* may — within the limits of their respective jurisdictions — lay down conditions of employment by arbitration award. A good idea of the extent of their powers in this direction may be obtained from the enumeration of the

subjects that fall within the jurisdiction of the Commonwealth Court of Conciliation and Arbitration.

According to section 4 of the Commonwealth Conciliation and Arbitration Act of 22 June 1928 [1] the " industrial matters " with which the Commonwealth Court of Conciliation and Arbitration may deal include :

> All matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms, and conditions of employment or non-employment, and in particular, but without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organisation, association, or body, and any matter as to the demarcation of functions of any employees or classes of employees, and any claim arising under an industrial agreement, and includes all questions of what is fair and right in relation to any industrial matter having regard to the interests of the persons immediately concerned and of society as a whole.

The laws of the various States have followed this example and given equally explicit definitions of the powers of the State Courts.[2]

The *New Zealand* Industrial Conciliation and Arbitration Act of 8 June 1936 includes in the definition of " industrial matters " given in section 2 also all matters affecting the privileges, rights and duties of industrial unions or associations and their officers.

Under the *French* Act of 24 June 1936 collective agreements must embody provisions relating to :

1. Freedom of association and the worker's freedom of opinion ;
2. The appointment in undertakings employing more than ten persons of delegates elected by the staff from among members of the staff to submit to the management individual claims which have not received direct satisfaction and which refer to the application of wage rates, the Labour Code and other laws and regulations concerning the protection of the workers and their health and safety ; these delegates may call in the assistance of a representative of their trade union ;
3. Minimum wages fixed by category and by district ;
4. Notice of dismissal ;
5. Organisation of apprenticeship ;
6. Procedure for the settlement of disputes arising out of the application of the collective agreement ;
7. Procedure for the revision or amendment of the agreement.

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[1] Cf. *Legislative Series*, 1928, Austral 2.

[2] Cf. *Legislative Series*, 1926, Austral. 7, section 5 (New South Wales) ; 1929, Austral. 6, section 5 (Queensland) ; 1926, Austral. 1, section 5 (South Australia) ; 1925, Austral. 12, section 4 (Western Australia).

A collective agreement may not contain clauses contrary to the laws and regulations in force, but they may stipulate more favourable provisions.

In the *U.S.S.R.*, the parties to collective agreements are obliged, when determining conditions of employment, to observe the guiding principles laid down by the State.

But some laws do more than prescribe a part or the whole of the subjects that must be dealt with in collective agreements, they lay down detailed rules for their effective application. Below will be found some examples of the compulsory regulation of wages and hours of work, followed by examples of the regulation of other working conditions.

A. — *Wages and Hours of Work*

The attention of the legislative authorities has been devoted mainly to the principles governing wages and the normal hours of work, more especially in countries in which there is no special legislation on this latter point.

Wages have come to be regulated by collective agreement not merely because of their intrinsic importance as a factor in social and economic life but, still more, because the problem of wages cannot be dealt with by law in a general and uniform manner, as can other social questions.

It will be found, indeed, that even in countries with the most extensive system of wage regulation (such as Australia and the U.S.S.R.) the legislation has had to take account of various geographical, occupational and even personal factors that play a very minor part in the regulation of other social questions.

Minimum wage fixing machinery. — The first form of legislative intervention, which, although indirect, is closely linked up with collective agreements, is the establishment of minimum wage fixing machinery. However vast the scope of collective agreements as a means of voluntarily regulating working conditions may be, there is no country in which they cover every branch of the economic system.

Quite a number of occupations or industries are excluded from the benefit of collective agreements, on account either of the methods of work (home work), or of the composition of the labour employed (women and young persons), or of the absence or weakness of trade unions.

This lack of collective agreements and the protection they

bring has led the legislative authorities to set up special wage committees, wage boards or trade boards to fix minimum wages for certain industries and thereby make good the deficiency.

It is sufficient in the present context, where any fuller analysis would be out of place, to have referred to this close and direct connection between minimum wage fixing machinery and collective agreements.[1]

Moreover, it will be shown later that systems of wage regulation by collective agreement often adapt and extend the methods of minimum wage regulation.

Wage regulation in undertakings working for the public authorities. — Here again it will suffice to mention the provisions contained in the laws of several countries concerning the relations of Government departments with undertakings working for the States. According to these laws, the public authorities may grant the concession only on condition that the contractor undertakes to fulfil certain social obligations — *inter alia*, to pay his workers either the prevailing rates laid down in collective agreements or a minimum prescribed in the specifications.

A distinction must be made between work to meet the normal requirements of the public services and emergency work undertaken to relieve unemployment. In this latter case the authorities usually reserve the right to prescribe lower rates of wages than the prevailing rates (e.g. in Germany), for it is held that the payment of lower rates, even if it may tend to affect the stability of wages in similar private industries, is justified as a matter of public policy, since the relief of unemployment is of paramount importance.

These two methods are more or less on the fringe of the system of wage-regulation by collective agreement ; those dealt with below, on the other hand, directly regulate the remuneration of workers by collective agreement or some similar procedure. It will be found that they range from the mere legal confirmation of wage rates freely agreed upon by the parties to the detailed regulation of wages in advance by the authorities responsible for the collective regulation of conditions of employment.

Legal confirmation and application to third parties of wage rates fixed by collective agreements. — This is the method adopted,

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Minimum Wage Fixing Machinery*. Studies and Reports, Series D (Wages and Hours of Work), No. 17. Geneva, 1927.

with variations on points of detail, in *Great Britain* under the Cotton Manufacturing Industry Act of 18 June 1934, in *Spain* under the Joint Boards Act of 27 November 1931, in the *Netherlands* under the Industrial Councils Act of 7 April 1933, in *Canada* under the Industrial Standards Acts of Alberta and Ontario passed in 1935, and in the *Union of South Africa* under the Industrial Conciliation Acts of 28 March 1924, 28 May 1930, and 7 March 1933. (See above, A, Chapter II : " Collective Agreements on an Occupational Basis ".)

It may be added that in countries such as *Austria*, *Brazil*, *Canada* (Quebec), *Czechoslovakia*, *France*, *Greece*, *Italy*, and *Mexico*, where the provisions of collective agreements can be extended to third parties, the act of extension has similar effects. (See below, Chapter IV, " The Scope of Collective Regulation ".)

Establishment of guiding principles to be followed by the authorities responsible for the collective regulation of conditions of employment. — This is the system adopted for instance in *Italy*[1] It was pointed out already in the first part of this study that the trade unions, the labour courts and the corporative organisations had to employ a threefold criterion when fixing wages : the normal living requirements of the worker, the capacity of the industry to pay and the efficiency of the individual worker.

In *Italy*, section XIII of the Labour Charter provides that the data collected by public departments, the Central Statistical Institute and legally recognised trade associations respecting conditions of production and labour, the state of the money market and variations in the workers' standard of living, collated and prepared by the Ministry of Corporations, will be used as the criterion for the adjustment of the interests of the various categories and classes among themselves and of these interests with the higher interests of production.

So far, conditions of employment and wage rates have been fixed in Italy on a purely contractual basis, by voluntary agreements between the associations of employers and workers. But the establishment of corporations by the Act of 5 February 1934 will doubtless lead to far-reaching changes in the methods of fixing

[1] Cf. *Legislative Series*, 1934, Por. 3 and the Portuguese Legislative Decree of 1 April 1935 concerning minimum wages This Decree authorises the Under-Secretary for Corporations to fix a minimum wage whenever there is a systematic fall in wages as a result of cut-throat competition in any branch of trade or industry. Cf. also the *Greek* Act of 16 November 1935 on the settlement of collective labour disputes (*Legislative Series*, 1935, Gr 10).

wages. It will be remembered that section 10 of the Act of 3 April 1926 concerning collective labour relations empowered the corporations to lay down *general rules governing conditions of employment* in the undertakings within their field of activity, and the Decree of 1 July 1926 (sec. 57) gave these rules the force of collective agreements. But section 8 of the Act of 5 February 1934 [1] states that the corporations are also empowered to "*draft rules for the collective regulation of economic relations* and for centralised discipline in production". To this end they have very extensive powers of control over economic affairs (cf. Part III of this study).

This means that the corporations, which are now responsible on the one hand for laying down general rules concerning working conditions and on the other for organising the economic relationships between the undertakings within their jurisdiction, will now be able, with a full knowledge of the situation, to prescribe conditions of work on a solid basis and in the light of economic conditions, and *vice versa*.

Apart from the general problem of wage regulation, Italian legislation endeavours to solve the special problems of piece rates.

Section XIV of the Labour Charter prescribes that "when work is paid for by the piece, the piece rates shall be fixed so that it is possible for an industrious worker of normal working capacity to secure minimum earnings higher than the basic wage", but it does not oblige the parties to regulate the system by collective agreements.

As early as 1931, however, the Central Committee of Corporations had decided that the action of the trade unions with regard to the fixing of wages should include, in collaboration with the employers' associations, the consideration of the factors — time, output and rationalisation — all of which have an influence on wages.

Again, at a meeting held on 8 and 9 November 1934 the National Committee of Corporations declared that :

> The adoption of any system of piece-work or wage bonuses should be the subject of collective regulation. Such collective regulation should entail the following guarantees : (1) that all remuneration resulting from such systems should conform to the principles of section XII of the Labour Charter (containing the criteria for wage fixing mentioned above) ; (2) that the workers should be able to understand clearly and simply the elements which determine their own remuneration ; (3) that the standards of output should not be fixed

[1] Cf. *Legislative Series*, 1934, It. 1.

by one party but by agreement between the associations of employers and workers.

The Committee instructed the associations of employers and workers to examine as soon as possible the conditions resulting for the workers from the application of the Bedaux system and other systems of piece-work or bonuses, together with the conditions resulting from possible variations in standards of output. If difficulties could not be speedily settled, disputes should be brought before the Corporations concerned.

These decisions show that in Italy the working and application of wage systems have been placed under the direct supervision of the trade unions and the corporations.

Actual fixing of wages (and of hours of work) by industrial arbitration courts in accordance with certain principles prescribed by law or established by the courts. — This is the method used in the *Commonwealth of Australia* (in Queensland, New South Wales, South Australia and Western Australia) and in *New Zealand*.

Mention was made already (cf. above, " Conciliation and Arbitration as a Basis for Collective Agreements ") of the criteria adopted by the arbitration courts in Australia and New Zealand when fixing wages by award.

The Australian Commonwealth Conciliation and Arbitration Act, as amended on 18 August 1930, does not contain exact rules for fixing wages and normal hours of work, but it states that the decision to change the normal hours of work or the basic wage or the principles by which this wage is calculated requires a majority among the members of the Federal Court, which for this purpose comprises the Chief Judge and at least two other judges, whereas any other dispute can be settled by a single judge or even by the conciliation commissioner.

On the other hand the laws of some of the Australian States lay down the principles to be followed by the arbitration authorities (industrial courts or commissioners, wages boards, etc.) when fixing the basic wage or the normal hours of work.

The practical enforcement of the principles laid down in the legislation is, of course, always a matter for the courts, and a complete picture of the actual working of the system can be got only by a careful analysis of the awards themselves.[1] Subject

[1] For further details concerning wage fixing machinery in Australia, cf George ANDERSON : *Fixation of Wages in Australia*, 1929 ; for New Zealand, cf. N. S. WOODS : " A Study of the Basic Wage in New Zealand prior to 1928 ", in *The Economic Record*, December 1932.

to these reservations, however, it is of interest to mention here a few of the most typical provisions of the laws of one of the Australian States concerning the fixing of the basic wage, simply as an example, seeing it is impossible to cite all the clauses of Australian laws dealing with wages.

Section 9 of the Conciliation and Arbitration Act of Queensland of 6 January 1933 [1] provides that the Industrial Court, constituted for this purpose by the President and two members, may make declarations as to :

(a) cost of living ;
(b) the standard of living ;
(c) the basic wage for males and females ;
(d) the standard hours ;

Provided that :

The basic wage of an adult male employee shall be not less than is sufficient to maintain a well-conducted employee of average health, strength, and competence and his wife and a family of three children in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect of which such basic wage is fixed, and provided that in fixing such basic wage the earnings of the children or wife of such employee shall not be taken into account ;

The basic wage of an adult female employee shall not be less than is sufficient to enable her to support herself in a fair and average standard of comfort, having regard to the nature of her duties and to the conditions of living prevailing among female employees in the calling in respect of which such basic wage is fixed ;

The Court shall, in the matter of making declarations in regard to the basic wage or standard hours,[2] take into consideration the probable economic effect of such declaration in relation to the community in general and the probable economic effect thereof upon industry or any industry or industries concerned.

Sections 264-267 of the Labour Acts of 1920-1924 in South Australia (text of 6 January 1926 [3]), section 7 of the Arbitration Act of New South Wales of 18 March 1926,[4] as amended on 13 December 1929,[5] and sections 121-124 of the Arbitration Act of Western Australia of 31 December 1925,[6] as amended by the Act of 24 December 1930 [7] all define in a similar manner the rules to be observed by the arbitration authorities when fixing the

[1] Cf. *Legislative Series*, 1933, Austral. 1.
[2] With regard to the relationship between normal working hours and the basic wage, cf. section 10 of the same Act.
[3] *Legislative Series*, 1926, Austral. 1.
[4] *Legislative Series*, 1926, Austral. 7.
[5] *Legislative Series*, 1929, Austral. 5 B.
[6] *Legislative Series*, 1925, Austral. 12.
[7] *Legislative Series*, 1930, Austral. 7.

basic wage. As was mentioned above, the basic wage is a minimum real wage ; a lower rate of wages is permitted only in exceptional circumstances and subject to the statutory conditions concerning certain groups of workers whose ability is below normal and who therefore run the risk of being dismissed if the rules concerning the minimum wage were strictly applied. Consequently, most of these Acts permit exceptions in certain strictly specified cases for the benefit of young persons, women, disabled persons and older workers.

As the question of hours of work has been dealt with in special studies by the Office, it must suffice to note here that the basic wage is always reckoned in terms of normal working hours.

It may be remembered that in *New Zealand* the Arbitration Court is required, on the one hand, to fix the basic rate of wages at a level sufficient to enable a man to maintain a wife and three children in a fair and reasonable standard of comfort and, on the other, to fix the normal working week at 40 hours. Moreover, the reduction of hours may not entail any fall in weekly wages.

Simultaneous regulation of certain conditions of employment — more especially the minimum wage and maximum hours — and of certain industrial conditions. — This method has been adopted in the *United States*, *Canada* (Industrial Standards Act of Alberta, 1935) and to some extent in *France* under the Legislative Decree of 3 October 1935 concerning the silk industry.

In the case of the United States — for which the Office has already published a detailed study of the machinery for fixing wages and hours of work [1] — it will be recalled that the former National Recovery Act of 16 June 1933 prescribed that the compulsory regulation, by the codes of fair competition, of wages, hours of work and certain other conditions of employment was to be accompanied by the regulation of competitive conditions and the detailed regulation, in some industries, of production, prices and markets.

Since the repeal of the Act of 16 June 1933 by order of the Supreme Court (cf. above, p. 81), the American Congress has passed an Act for the reorganisation of the coal industry which applies to that industry some of the fundamental principles of the earlier Act.

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Social and Economic Reconstruction i the United States.* Studies and Reports, Series B (Economic Conditions), No. 2(

The Guffey Act of 30 August 1935 for the reorganisation of the coal industry [1] is based on the following principles :

(1) An excise tax of 15 per cent. per ton of coal, 90 per cent. of the yield being returned to the industries that comply with the provisions of the Act ;
(2) Organisation of the industry in accordance with the provisions of the earlier codes of fair competition in the coal industry ;
(3) The establishment, in the Interior Department, of a National Bituminous Coal Commission, which, in collaboration with 23 district boards, would fix minimum prices for coal in accordance with the provisions of the Act, with a view to securing a minimum living wage for the workers and a reasonable margin of profit for the employers ;
(4) The creation of a Bituminous Coal Labor Board, consisting of one employer, one worker and an independent chairman, to prevent and adjudicate disputes arising out of the application of the guarantees granted to the workers by the Labor Relations Act (Wagner Act, cf. above, p. 79), which are incorporated in the present Act ;
(5) Creation of the office of Consumers' Counsel to represent the interests of the consuming public. [2]

This Act, too, was invalidated by a decision of the Supreme Court of 6 March 1936. (The text of the decision is reproduced in the *International Survey of Legal Decisions on Labour Law*, 1935-36 ; United States, No. 1).

There is also before Congress a Bill for the reorganisation of the textile industry, which also provides, on the one hand, for the establishment of a minimum wage, maximum hours and compensation for dismissal, and, on the other, for a certain control of production and the regulation of piece rates.

The adoption of the Walsh-Healy Act concerning undertakings working for the State which came into force on 28 September 1936 enables the Government to prescribe, *inter alia*, minimum wages and maximum hours when allocating orders to contractors.

The Industrial Standards Act of 1935 in Alberta makes pro-

[1] Cf. more especially Part III, " Labor Relations " of the Bituminous Coal Conservation Act, 1935 (Public — No. 402 b — 74th Congress) (H. R. 9100). Cf. also the text of the collective agreement concluded under this Act in *Monthly Labor Review*, December 1935 : " Renewal of Appalachian Agreement in Bituminous Coal Industry ".

[2] Cf. *Journal Officiel*, 31 October 1935, No 256.

vision, not only for the preparation of schedules of wages and hours of work, but also for the establishment of standard rules for the price of commodities for industrial use or for sale within the Province.

The object of the *French* Decree of 30 October 1935 for the regulation of the silk industry was mainly to adjust the means of production to the state of home and foreign markets, in particular by controlling the extension of existing factories or the establishment of new factories, and to prevent a slump in wages and piece rates by the establishment of minimum basic rates. The agreement was to come into force if approved by two-thirds of the weaving and throwing manufacturers representing three-fourths of the means of production. As the number of ratifications received was inadequate, it remained a dead letter.

Wages and other working conditions fixed ex officio *by direct representatives of the State.* — This system was introduced in *Germany* by the National Labour Act of 20 January 1934, section 32 of which, as was mentioned, empowers the labour trustees to lay down minimum conditions of employment and remuneration for their respective districts.

In exercising this power, the labour trustees are assisted by a committee of experts ; they must consult this committee but need not follow its advice. It should be noted, however, that the system of consultation in social and economic matters was recently reorganised on a comprehensive basis under the auspices of the Labour Front.[1] Moreover, the Labour Front recently set up an Institute of Scientific Research, the chief duty of which is to investigate thoroughly the best methods of establishing fair rates of wages.

Establishment of a wages fund for each industry, occupation and undertaking, which the parties to collective agreements have to allocate to the various groups of workers in accordance with a certain number of criteria, the principal one being individual output. — This is the system followed in the *U.S.S.R.* There is no point in studying wage-fixing in the U.S.S.R., except in conjunction with State economic planning, since the economic and financial plans regulate every detail of production and labour, including wage rates. As the whole of this question is dealt with

[1] Cf. *I.L.O. Year-Book 1934-35,* Chapter VII : " The Workers' General Rights".

in Part III of the Report (cf. below, p. 241), the reader may be referred to that section.

These are the main methods in force for fixing wages by collective agreements. Part III, entitled " The Place of Collective Agreements in the Economic Structure of the Community " deals with the application of these various systems and their effects on social and economic conditions.

B. — *Other Conditions of Employment*

When dealing with conditions of employment other than wages and hours of work, the function of collective agreements is to pave the way for legislation or to fill up lacunæ rather than to take the place of social legislation, for these other matters can, and in many countries do, form the subject of protective labour legislation, whereas wages do not.

Consequently, when the legislation concerning collective agreements contains any imperative provisions on this subject — which is rarely the case — they usually consist simply in an enumeration of the conditions of employment that should be regulated by means of collective agreements, but the way in which these rules are to be applied is not specified (cf. above, Italy, Portugal, Germany, pp. 144 and 145).

In countries with compulsory arbitration systems, of course, such as the Commonwealth and the States of *Australia*, in which the competence of the industrial courts covers various matters dealt with in other countries by labour legislation, conditions of employment are determined practically entirely by arbitration award (cf. above, p. 145). Similarly, the *Italian* Labour Charter, in addition to laying down the rules concerning wages that were analysed above, enunciates the following principles to be observed by the parties to collective agreements when determining working conditions :

XIV. Payment shall be made at a higher rate for night work not included in regular periodical shifts than for day work.

XV. Workers shall be entitled to a weekly rest day falling on Sunday.

Collective contracts of employment shall apply this principle with due regard to the provisions of existing laws and the technical requirements of undertakings, and, subject to these requirements, shall ensure that civil and religious holidays are observed in conformity with local tradition.

XVI. Every worker in an undertaking working throughout the year shall be entitled to an annual holiday with pay after one year's uninterrupted service.

XVII. In undertakings working throughout the year, if a worker is dismissed through no fault of his own, he shall be entitled to compensation proportionate to the number of years for which he has served. Such compensation shall also be payable in the event of the death of the worker.

XVIII. In undertakings working throughout the year, the transfer of the undertaking to another owner shall not terminate the contract of employment, and the staff employed in the undertaking shall retain its rights under the new proprietor. Similarly the sickness of the worker shall not terminate the contract of employment, provided that it does not exceed a certain fixed period. A worker shall not be dismissed because he has been called up for service in the army or the militia.

XIX. If workers commit breaches of discipline or acts which disturb the normal working of the undertaking, they shall be punished, according to the gravity of the offence, by a fine, suspension from employment, or, in more serious cases, summary dismissal without compensation.

The cases in which the employer may inflict a fine or may suspend or summarily dismiss a worker without compensation shall be specified.

XX. A newly-engaged worker shall be subject to a period of probation during which the right to cancel the contract may be exercised by either party, subject only to payment of remuneration for the time during which work was actually performed.

These are pre-legislative measures, to which effect must be given, on pain of nullity, by collective agreements until such time as legislation is enacted on these points.

One problem of considerable practical importance that is rarely dealt with by labour legislation is that of the protection of workers against individual dismissal. It is specially mentioned in the legislation on collective agreements in *Spain*, under the Joint Boards Act, and in *Germany* under the National Labour Act.

Section 45 of the *Spanish* Act of 27 November 1931[1] empowers the joint labour boards or their local sections to decide concerning the legality of the dismissal of employees from factories, workshops or occupations in which they were working, in conformity with a special procedure outlined below.

The dismissal of a worker may be justified on grounds for which he is responsible or for reasons over which he has no control. In the first case, dismissal does not give a right to any compensation. In the second case (industrial depression, cessation of the undertaking, casual or limited character of the employment in question, etc.) the employee may claim his wages for the normal

[1] Cf. *Legislative Series*, 1931, Sp. 15.

period of notice fixed by custom or by the employment regulations adopted by the board concerned, which is responsible in every case for deciding concerning the attendant circumstances and the decision to be issued in conformity therewith.

If an employee is dismissed on the allegation by the employer of any of the causes which justify dismissal, or without his giving any reason whatever, the employee may lodge a complaint against the dismissal with the joint board or the competent section of the board within a time-limit not exceeding five working days from the day following his dismissal. The complaint must be submitted by the employee concerned, or, as his representative, the industrial association of which he is a member, or a person of the same category.

If the board decides that there are no grounds which justify dismissal, it gives the employer the option of reinstating the employee or paying him the compensation fixed by the chairman in the exercise of the discretion on the subject granted him by the Act.

In both cases, provided that the employee has not entered into other employment, the employer is bound to pay him the wages due for the days that elapsed between the dismissal and the date by which the claim must be established in order to come within the normal time-limits laid down by the Act, but not exceeding 24 days.

The compensation to be paid to the employee for the loss inflicted on him by the dismissal pending his entry into fresh employment may vary between a fortnight's and six weeks' wages.

Finally, section 64 of the Act states that employees may not waive any of their rights under the Act and under the decisions legally adopted by the joint bodies.

Sections 56 to 62 of the German Act of 20 January 1934 [1] similarly replaces the protective provisions against dismissal contained in the former works councils legislation, which it repealed, by a certain number of rules concerning the individual dismissal of workers.

They provide that if a salaried or wage-earning employee is dismissed after one year's employment in one and the same establishment or undertaking, and the said establishment or undertaking employs as a rule not less than ten persons, he may lodge

[1] Cf. *Legislative Series*, 1934, Ger. 1.

a complaint with the labour court within a fortnight of receiving notice to leave, applying for the revocation of the dismissal if it constitutes an undue hardship and is not necessitated by conditions in the establishment.

If a confidential council has been set up in the establishment, the complaint must be accompanied by a certificate from the said council showing that the continuanec of the employment of the person in question has been unsuccessfully raised in the council. The production of the certificate may be waived if the dismissed person shows that he appealed to the confidential council within five days of receiving notice to leave, but that the council failed to issue the certificate within five days of his appeal.

If the court decrees the revocation of the dismissal, it must *ex officio* include in the sentence an award of compensation to take effect if the owner of the undertaking refuses to revoke the dismissal.

The owner of the undertaking must state to the dismissed person within three days of the communication of the sentence whether he elects to revoke the dismissal or to pay compensation. If he fails to make this statement within the limit, he is deemed to have elected to pay compensation.

Both the economic situation of the dismissed person and the solvency of the establishment must be duly taken into account in the assessment of the compensation. The compensation is calculated according to the duration of the employment, and may not exceed four-twelfths of the last annual earnings.

If the owner of the undertaking revokes the dismissal, he is bound to pay the dismissed person his wages or salary for the interval between his discharge and the resumption of his employment. However, the owner of the undertaking may make deductions in respect of public allowances received by the dismissed person during the interval from unemployment relief or poor relief funds, and is bound to repay these sums to the authority granting them.

If the dismissed person has in the meantime entered into a new contract of employment, he is entitled to refuse to resume his employment with his previous employer.

If a wage-earning or salaried employee is dismissed without due notice, in the course of the proceedings by which he establishes the nullity of this dismissal, in anticipation of the finding of the said dismissal valid for the next permissible date of dismissal, he may apply for the revocation of this dismissal.

The provisions that have been thus briefly summarised do

not apply in cases of dismissal in pursuance of an obligation based on the law or collective rules.

It may also be noted in this connection that the *French* Act of 19 July 1928[1] concerning notice of dismissal, although it does not form part of the system of regulating working conditions by collective agreement, makes a direct reference to the system, which may be quoted. The Act amends section 23 of the Labour Code, which now states that "the giving of notice and the duration of the period of notice shall be fixed in accordance with local and trade custom, or in default of such custom by collective agreements. Exceptions to the period of notice fixed by custom may be made by collective agreements ".

On the other hand, any clause in an individual contract or in rules of employment fixing a period of notice less than that established by custom or by collective agreement is *ipso facto* null and void. The parties are not permitted to waive in advance their right to claim compensation under the provisions governing notice of dismissal.

Compulsory Regulation of the Rights and Obligations of the Parties to Collective Agreements

The enforcement of the working conditions laid down by collective agreement is obviously a matter for the contracting organisations much more than for the parties to individual contracts who fall within the scope of the agreement.

It is not surprising, therefore, that the legislation of most countries on collective agreements regulates, often in great detail, the rights and obligations of the parties to these agreements.

The provisions are fundamental parts of the system of collective agreements and, as such, have been or will be analysed in other parts of this volume. It will therefore be sufficient here to give a few general indications as to the main points to which these provisions refer.

The obligation to give effect to agreements. — The fundamental obligation of the parties, which is to give effect loyally to the agreement they have concluded, is dealt with by a number of laws, which cover :

(1) The reciprocal obligations of the parties : regulation or prohibition of strikes, lock-outs and other forms of collective

[1] Cf. *Legislative Series*, 1928, Fr. 4 B.

pressure ; compulsory conciliation and arbitration ; the legal determination of the responsibility and penalties for infringement of collective agreements, etc. ;

(2) The obligation of the parties towards their members : the obligation to use all the means prescribed in the rules to induce their members to comply with collective agreements — trade union discipline, fines, loss of membership, etc.

This matter will be referred to later in connection with the enforcement of collective agreements and the penalties for their non-observance.

The organisation of relations between contracting parties. — The problem of the organisation of the relations between the parties to collective agreements (trade union clauses) is dealt with in a variety of ways according to the different methods by which collective agreements are drawn up. These were described in Part I, to which the reader may be referred.

Certain laws, however, deal specially with the question of preferential employment for trade union members.

Section XXIII of the *Italian* Labour Charter, for instance, permits employers, when engaging workers through the employment exchanges, to give preference from among the persons on the register to members of trade associations according to seniority in registration.

Similarly, section 40 of the *Australian* Commonwealth Conciliation and Arbitration Act [1] provides that the court or the conciliation commissioner may, by an award or an order made on the application of any organisation or person bound by the award, direct that, as between members of organisations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall be given to such members, other things being equal.

Similar provisions exist in the legislation of the various States (an instance of detailed regulations on the point is section 24 C of the Arbitration Act of New South Wales of 18 March 1926, as amended by section 4 of the Act of 9 December 1927 [2]).

The provisions of the *New Zealand* Act of 8 June 1936 are specially characteristic in this respect since they tend wherever

[1] Cf. *Legislative Series*, 1928, Austral. 2.
[2] Cf. *Legislative Series*, 1927, Austral. 7.

possible to give absolute priority of employment to trade unionists.

To this end the Act requires all workers who are subject to any award or industrial agreement to be members of a union. Every award or agreement made after the passing of the Act must contain a provision making it unlawful to employ in the industry concerned any adult who is not a member of an industrial union bound by an award or agreement. One month after the passing of the Act all existing awards and agreements were to be deemed to be amended to include the same provisions.

No union, unless its maximum membership is fixed by the Arbitration Court and is already reached, may refuse to accept as a member any person obliged by the Act to become a member. Any person debarred by this provision from membership of a limited union may be employed if no member of the union is available and willing to perform the particular work to be done. Any other non-unionist may be continued in employment during such time as no member of the union bound by an award or agreement is available and willing to do the work in question.

Preference may also be granted to organised workers under the legislation of *Austria*, *Germany*, *Mexico*, *Portugal*, the *United States* and the *U.S.S.R.*

Joint activities. — Most of these, such as the regulation of apprenticeship, the organisation of joint employment agencies and the establishment of insurance and provident funds of all kinds, are dealt with in the majority of countries by special legislation. Other matters, such as the organisation of supervisory committees, are generally left entirely to the discretion of the contracting parties.

It may be noted, however, that in *Australia* apprenticeship and placing are regulated directly by the conciliation and arbitration legislation.

In *Italy*, also, section XXVIII of the Labour Charter states that collective agreements must, whenever technically possible, provide for the setting up of mutual sick benefit funds by means of contributions from employers and workers, to be managed by representatives of both parties under the supervision of the corporative organs.

Collective engagement and dismissal of workers. — The collective engagement and dismissal of workers, which is a particularly difficult problem in periods of depression, is not dealt with by

legislation except in countries that keep a check on, and sometimes strictly control, the movements of labour.

Section 20 of the *German* National Labour Act of 20 January 1934 (which replaces the Order of 8 November 1920 concerning measures to prevent reductions of staff or the closing of undertakings, as amended by the Order of 15 October 1923 concerning the closing of undertakings and the distribution of employment) stipulates that an employer is bound to give notice in writing to the labour trustee in the following cases :

(a) In an establishment which as a rule employs less than 100 persons, before he dismisses more than nine persons ;

(b) In an establishment which as a rule employs not less than 100 persons, before he dismisses ten per cent. of the persons usually employed in the establishment and before he dismisses more than fifty persons within four weeks.

Dismissals of the prospect of which notice must be given under this subsection may not become operative without the approval of the labour trustee until four weeks have elapsed since the sending to him of the notice ; the labour trustee may grant retroactive approval. He may also give instructions that dismissals shall not become operative until at most two months after notice thereof is given. In cases where dismissals are not carried out within four weeks of the date as from which they are operative under the first or second sentence, it is held that the notice has not been given.

If the owner of the undertaking is not in a position to keep his employees in full work until the date mentioned above, the trustee may authorise him to introduce a reduction of the hours of work in his undertaking (spreading the work). Nevertheless, for this purpose the weekly hours of work of an employee may not be reduced below twenty-four hours. Where the system of spreading the work is adopted, the owner of the undertaking is entitled to make a proportionate reduction in the wages or salary of the employees whose hours of work are reduced, provided that the reduction of pay does not become operative until the date on which the employment would end under the general provisions of the law or the terms of the contract.

In establishments which as a rule do more work at a particular time of year (seasonal establishments), or which as a rule do not work for more than three months in the year (temporary seasonal

establishments), the above provisions do not apply to dismissals occasioned by the special nature of the establishment.

It has also been mentioned that in *Australia* the arbitration courts are competent to deal with all matters pertaining to the employment or non-employment of workers. This term includes, without limiting its general scope, all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal or non-employment of any particular persons, or of persons of any particular age or sex, or being or not being members of any organisation, association or body, and any matter as to the demarcation of functions of any employee or class of employees.

Equally definite provisions exist in the legislation (codified texts) of the various Australian States : New South Wales (section 5 b, c), Queensland (section 5 c, d, e, f, g), South Australia (section 4 c) and Western Australia (section 5 c, d, e, f, g) and of New Zealand (section 2 of the Act of 8 June 1936).

Employment and dismissal are, of course, very strictly controlled in the *U.S.S.R.*, where the economic plans regulate in detail the whole movement of workers.

Mention may be made, in conclusion — although its connection with the legislation on collective agreements is only indirect — of the important Provisional Order of 20 April 1934 [1] in *Czechoslovakia* which was renewed in 1935 , it deals with the closing down of undertakings and guarantees a considerable measure of protection against collective dismissal.

[1] Cf. *Legislative Series*, 1934, Cz. 2.

CHAPTER IV

THE SCOPE OF COLLECTIVE REGULATION

The preceding chapters dealt with the legal significance of collective regulation and with the legal value of the provisions which could or should form the content of such regulation.

Who are the beneficiaries ? In other words, how is the scope of collective regulation limited in time and space and with respect to occupations and persons ?

This question in fact raises two quite separate problems, as to the scope of legislation concerning collective agreements on the one hand and as to the scope of the collective or similar agreements concluded in virtue of such legislation on the other.

I. — Scope of Legislation concerning Collective Agreements

Since the scope of collective agreements has been limited, in the various countries, on fairly uniform lines, all that is necessary here is to elucidate the principles which are commonly applied in such limitation and then to mention the laws which depart from the general rule.

Most of the laws concerning collective agreements are, with exceptions to which reference will be made later, in force for an unlimited time, while, in space, they apply to the whole country.

On the other hand, the laws themselves seldom define the scope of collective agreements with respect to occupations and persons.

The very nature of collective agreements, however — the fact that the initial regulation of working conditions by such agreements only becomes effective when individual contracts of employment are concluded — suggests that, in practice, the scope of the agreements and contracts is the same. In other words, that scope covers all employment relations between wage-earners and employers which are governed by private law, whether the employer

be an individual, a body corporate or even a public body corporate, but does not apply to employment relations governed by public law.

Therefore, subject to compliance with legal stipulations and provided it has been possible to form the trade associations and unions which are the legal parties to collective agreements, laws concerning such agreements govern relations between employers and workers not only in industry, trade, liberal occupations and agriculture,[1] but also in public administrations and services. Only the relations between the State or other public institutions and public officials or public servants, whose conditions of employment are laid down in staff regulations, lie in principle outside the scope of the laws in question.

Nevertheless the " normal " scope of laws and regulations concerning collective agreements allows, as defined, of exceptions which may be either extensive or restrictive. These will have to be mentioned.

The position of certain countries with Federal constitutions will be considered separately.

Restriction of the Scope of Legislation concerning Collective Agreements

In the first place, certain laws which were promulgated by way of experiment or with a view to meeting an emergency have a restricted scope.

In *Great Britain* the Cotton Manufacturing Industry (Temporary Provisions) Act is only to remain in force for a limited time, i.e. until 30 December 1937. Further, its application is limited geographically and occupationally to the Lancashire cotton industry and materially to wage regulation alone.

In the *United States* the National Recovery Act of 16 June 1933 which was found unconstitutional by the Supreme Court shortly before its validity expired was to have remained in force for two years.

The *Canadian* Acts, which provide for the extension of collective agreements to third parties, do so in respect to wages and hours of work alone. Thus, under the Quebec Act of 20 April 1934, the only provisions in the collective agreements which were, by virtue of the Decree extending application to third parties, made

[1] Cf. INTERNATIONAL LABOUR OFFICE : *Collective Agreements in Agriculture*. Studies and Reports, Series K (Agriculture), No. 11, Geneva, 1933.

binding on all wage-earners and employers in an industry or trade, were those relating to wages and hours of work.

Similarly, in Alberta and Ontario, the Acts of 1935 concerning industrial standards provide for the application of the agreed wage scales and hours of work alone to all persons concerned in the industry or district.

Other Acts only apply to given industries. This is true not only of the Lancashire Cotton Manufacturing Industry Act, but also of the United States Act of 30 August 1935 concerning the coal industry. Similarly in *Czechoslovakia*, special Acts were passed in 1935 introducing collective agreements in the textile, flour milling and motor industries, etc.

Other laws which are in principle of general application exclude certain categories of workers.

For instance the Act of 26 March 1924, amended by the Act of 7 March 1933, concerning the prevention and settlement by conciliation of disputes between employers and wage-earners in the *Union of South Africa* applies neither to employment in agricultural undertakings or farms, nor, unless by the authority and with the approval of the Minister, to undertakings run by the Crown or the Government of the Union or one of the latter's departments.

The Act of 27 November 1931, amended by the Act of 16 July 1935, concerning joint labour boards in *Spain* likewise excludes domestic servants and all work performed in private offices or by persons engaged in liberal professions for their own account and not in anyone else's interest.

Further the Act does not apply to work performed in industries and on estates directly run by public authorities, or to public utilities operated on behalf of the State, the provinces, communes or other administrative or public bodies. On the other hand, in these occupations special provision has been made for bodies in which both the administration and the workers are represented, and, in all cases, until such bodies begin to operate, the workers employed in these services may not be required to work under conditions which are less favourable than those prevailing in similar occupations and trades. Finally the Minister of Labour may introduce special regulations concerning the activities of certain public services of national importance, provided such regulations apply the general principles contained in the Act.

The scope of the *Italian* Act of 3 April 1926 concerning the legal organisation of collective employment relations did not cover

home workers. Nevertheless under Section XXI of the Labour Charter the benefits and obligations stipulated in collective labour agreements were to be extended to such workers.

In the *United States*, within the meaning of the National Labour Relations Act (Wagner Act) of 5 July 1935, the term " employer " does not include the United States, or any State or political subdivision thereof or any person subject to the Railway Labor Act.[1] Similarly the term " employee " does not include agricultural labourers or domestic servants or any individual employed by his parent or spouse.

Finally the scope of the Conciliation and Arbitration Acts passed in the various States of the *Australian Commonwealth* is defined in great detail and only excludes certain domestic and agricultural workers.

Extended Scope of Legislation concerning Collective Agreements

Whereas in the cases mentioned above the scope of the legislation concerning collective agreements has sometimes been defined restrictively, other countries have extended the definition so as to cover not only employment relations proper but also economic relations both in agriculture and in industry generally.

With reference to agriculture, it may be pointed out that the *Italian* Act of 3 April 1933 [2] extended the legal regulation of collective employment relations to contracts for produce-sharing in agriculture and for the letting of smallholdings.

Under section 1 of the Act, the legal regulations applicable in pursuance of the Act of 3 April 1926 and the Royal Decrees of 1 July 1926 and 6 May 1928 are to be extended to all leases and agreements, compacts and arrangements which are concluded by the competent trade associations for the purpose of regulating produce-sharing relationships (share tenancies, *métayer* system, etc.) and to accessory contracts relating to special branches of cultivation and stock-raising to be carried out on the land, which are subsidiary to the principal relationship.

Such leases, agreements, compacts and arrangements must however be in conformity with local customs and conditions and must not contain any provision relating to hours of work, holidays

[1] Railway labour relations are governed by an Act of 20 May 1934 concerning conciliation and arbitration in railway labour disputes (cf. *Legislative Series*, 1934, U.S.A. 1).

[2] Cf. *Legislative Series*, 1933, It. 7.

or probationary periods or any other provisions stipulated in collective contracts of employment which are contrary to the nature of the relationship.

The provisions of the preceding section are also to apply to contracts for the letting of smallholdings with a variable or fixed rent in kind or in money, where such contracts are concluded by smallholders who cultivate the land directly or mainly by their own labour or that of the members of their family.

Similarly the *Spanish* Act of 27 November 1931, amended on 16 July 1935, concerning joint labour boards, provides that in addition to the industrial and rural labour boards there are to be joint boards for rural property (secs. 79-88) and joint boards for agricultural production and industries (secs. 89-94).

Finally it may suffice to point out that the corporations in *Italy, Portugal* and *Austria*, the rescinded National Recovery Act in the *U.S.A.*, the Act concerning industrial standards in *Alberta*, and to some extent the Decrees concerning industrial agreements in *France* all deal in varying degrees with economic as well as employment relations. (Cf. below : " The Place of Collective Agreements in the Economic Structure of the Community ".)

The Scope of Legislation concerning Collective Agreements in Countries with a Federal Constitution

The definition of the territorial scope of legislation concerning collective agreements raises special difficulties in some countries which have a federal constitution.

In the first place, it should be pointed out that in most countries with a fairly pronounced federal constitution, such as *Germany, Austria, Brazil, Mexico* and the *U.S.S.R.*, the problem is as it were settled from the very outset inasmuch as under the constitutional law of those countries the central legislature is exclusively competent in matters of labour legislation, and in particular the regulation of collective agreements.

Thus the earlier *German* Act of 23 December 1923-28 February 1928 concerning collective agreements, and the National Labour Act of 20 January 1934, the *Austrian* Act of 18 December 1919 concerning the establishment of conciliation boards and collective agreements, and the Decrees concerning corporative organisation issued in pursuance of the new constitution of 1 May 1934, the *Brazilian* Decree of 23 August 1932 concerning collective agreements, the *Mexican* Labour Code of 18 August 1931 (chapter concerning collective agreements) and the Labour Code of the *U.S.S.R.*

(chapter concerning collective agreements) apply, in each case, throughout the national territory.

Similarly in *Switzerland* the essential legislative provisions in regard to collective agreements are contained in the Federal Code of Contract Law, without prejudice, however, to the right of cantons to introduce detailed regulations concerning the operation and application of collective contracts.

On the other hand, in the *Commonwealth of Australia*, in *Canada* and in the *U.S.A.*, the issues raised are different, for under the constitutional law of these countries both the Federal and the State (provincial) legislatures have power to enact legislation concerning collective agreements. Since, however, the problem is highly complicated and goes beyond the limits of the present enquiry, it need only be mentioned and not discussed here.

II. — Scope of Collective Agreements

It was observed in the chapter dealing with the legal nature of collective agreements (see p. 124, above) that collective agreements which have received legal recognition and other forms of collective regulation concerning labour conditions have, within the limits of their scope as defined with reference to time, territory, occupations and persons, the binding force of law. Accordingly the real significance of such regulation cannot be appreciated unless its scope has first been ascertained.

How has the problem been solved by legislation ? A general analysis of the laws and regulations concerning collective agreements suggests the following general rule : laws concerning collective agreements do not define the scope of such agreements *a priori* but lay down certain principles which must, for the purposes of such definition, be observed by the parties (under a contractual system) or by the bodies responsible for introducing collective regulation (under a compulsory system). The reason for this rule is — and it is one of the characteristic features which differentiate these two sources of labour law — that, unlike labour laws, which directly regulate labour conditions, laws concerning collective agreements merely confer on the " parties " or on certain public bodies authority to enact regulations.

Now as it is clearly impossible to foresee all the individual cases which may arise and it is therefore impossible to define the scope of agreements or ulterior regulations beforehand and in all their details, the parties concerned must be left to do this with

reference to the circumstances of time and of place on the one hand and on the other hand to the particular conditions prevailing in the occupation or industry to which such agreements or regulations are to apply.

Moreover, collective agreements could not serve the purpose for which they are intended, which is mainly to adapt labour conditions to changing economic circumstances, if they could only be concluded within rigid limits laid down beforehand.

But, subject to these reservations there is room for legislation which will give collective agreements the widest possible scope and hence the greatest measure of efficiency compatible with the purpose for which they are intended.

Enquiry into the provisions concerning the scope of collective agreements will show how the relevant legislation has been designed to reconcile the need for making such agreements as flexible as possible with that of giving them the maximum degree of efficiency.

As in the analysis of the other problems, the following survey will attempt to bring out the features which are common to various legislations, while only the provisions which go beyond the common rule will be cited.

The Validity of Collective Agreements in Time

The freedom of action of the parties or bodies concerned is limited by legislation : (1) at the date at which the collective agreement comes into force ; (2) so long as the agreement remains in force ; and (3) on the expiry of the agreement.

Entry into force. — It has already been observed that the entry into force of a collective agreement is conditional on compliance with a certain number of stipulations in regard to form and substance : e.g. the signature of the document containing the agreement ; the filing, registration and, in some cases, under a contractual system of regulation, the approval of the collective agreement before it comes into force ; under a compulsory system, the promulgation and publication of the awards, orders, decrees and regulations.

As a rule the entry into force of a collective agreement coincides with the fulfilment of these legal requirements.

Nevertheless — and here the autonomy of the professional legislative body recovers its rights — the parties, under a contractual system of regulation, and the authorities responsible for collective regulation under a compulsory system, may provide that a collec-

tive agreement shall apply as from some other date, either before or after that of legal entry into force. They may, for instance, provide — and this is the only case which has any legal or practical importance — that the agreement or regulations shall apply not as from the date on which they were signed or promulgated but from that on which a dispute settled by the collective agreement began.

In other words, the parties, or the body responsible for regulation, may make the collective agreement retrospective. If this is done, the agreement does not, as would normally be the case, merely determine the content of contracts of employment of persons covered by the collective agreement which are in force at the time or which may be concluded subsequently, but also that of contracts which, although they expired before the agreement was concluded, were valid during the period of retrospective application.

The effect of an agreement can, of course, only apply retrospectively to material obligations which may be fulfilled after the event, such as an increase in wages, the reinstatement of workers dismissed in consequence of a strike, etc., and not to purely formal stipulations such as the rule that certain contracts of employment must be drawn up in writing, or to obligations concerning the form and the instalments in which wages are paid, etc.

In short, it may be said that in most cases the legal provisions concerning the entry into force of collective agreements are not in any way imperative, and that the parties, or the arbitration or trade authorities, may always, subject to compliance with the formal and substantial stipulations governing validity, provide for such exceptions as they think fit.

The duration of collective agreements. — As in the case of entry into force, legislation leaves the parties concerned free to limit the duration of collective agreements as they think best. This follows from the fact that such legislation, in conformity with the ordinary law of contract, recognises three forms of collective agreements : those which are valid for an indeterminate period, those which are valid for a fixed period of time, and those which are only valid for the duration of a given undertaking.

In the first case, that of a collective agreement valid for an indefinite period, the parties may if they wish withdraw from the contract, provided (and here legislation concerning collective agreements departs from the rule of ordinary law) they give notice

of withdrawal, the notice varying, under different laws, from one to three months.

This restriction was necessary in order that the parties might have an opportunity to open negotiations in good time with a view to the renewal or amendment of the agreement before the latter expired.

In the second case, that of a collective agreement which is valid for a given period, legislation merely fixes the extreme limits of validity : (1) in some very rare cases a minimum limit which varies, under different laws, from six months to two years ; (2) in all cases, since ordinary law does not admit of permanent contracts with an unlimited validity, a maximum duration varying, in different countries, from two to five years.

If the parties fail to limit the duration of the agreement, the latter is presumed to have an indeterminate validity. If the agreement is concluded for a period which exceeds the legal maximum, it is not void, save in exceptional cases when the only reason for the agreement was its duration, but the latter may be limited to the legal maximum. Finally, an agreement which expires without having been explicitly terminated by the parties is presumed to have been tacitly renewed.

In the third case, a collective agreement the duration of which is limited to that of a given undertaking is only a special instance of the preceding type. Here again legislation simply fixes a maximum period of validity. If the undertaking has not come to an end when the collective agreement expires, the latter remains in force as an agreement with an indeterminate validity.

Under compulsory systems of regulation, it is of course the authorities responsible for the collective regulation of employment conditions, that is arbitration or judicial bodies and public authorities, who determine the validity of labour regulations in time. It is in the very nature of the system that such regulations should have a limited validity varying, according to the provisions of the Act which governs them, from one to five years (as in the case of the Australian arbitration awards).

Thus, within the limits laid down by law, the parties, or the authorities responsible for regulating conditions of employment, have a free hand in determining the duration of collective agreements.

The revision of collective agreements. — In spite of the legislative precautions taken to ensure the greatest flexibility in the conclusion

of agreements, it may happen that considerable changes occur in the economic position of the undertakings on which the agreements are binding during the validity of the latter. Now as has already been observed, in virtue of the principle that collective agreements may not allow of exceptions, and in some cases by reason of the penalties for which provision has been made, conditions of employment laid down in a collective agreement may not, so long as the latter is in force, be altered except by agreement between the parties. This rule holds good irrespective of any changes which may have occurred.

Pains have therefore been taken in legislation concerning collective agreements to provide remedies for the disadvantages which might arise from excessively rigid regulation.

In the first place, under a contractual system the parties may themselves prevent or lessen such disadvantages. They may, as has already been observed, systematically give preference to agreements which have been concluded for an indeterminate period, and from which they may at any time withdraw provided they give the notice stipulated by law or agreement.

Further, they may specifically provide, in the agreement itself, for revision and determine beforehand the circumstances in which such revision shall take place.

Finally, they may draft their agreement in such a way as to forestall the effects of future economic changes by making conditions of employment, and more especially stipulations in regard to pay, vary with certain economic indexes, such as cost of living, price, production indexes, etc.

It may be added that the principle of *rebus sic stantibus* has sometimes been applied by the Courts in order to justify the amendment or termination of agreements which have become inapplicable.

Under systems which allow, in varying degrees, for State intervention in the regulation of collective conditions of employment, specific legislative provision has been made for the revision or termination of collective agreements on certain conditions.

Thus, under section 28, paragraph 3, of the *Australian* Commonwealth Conciliation and Arbitration Act of 22 June 1928 (Consolidated text),[1] " If the Court is satisfied that circumstances have arisen which affect the justice of any terms of an award, the Court may, in the same or another proceeding, set aside or

[1] *Legislative Series*, 1928, Austral. 2.

vary any terms so affected ". Further, under section 38 O and 38 O(*a*)), the Court may suspend all or any of the terms of an award, vary its orders and awards, reopen any question and give an interpretation of any term of an existing award.

The Arbitration Tribunals of the various States in the Commonwealth and the Arbitration Court of New Zealand have the same powers of adapting, varying, reconsidering, and cancelling awards.

Under section 71 of the *Italian* Royal Decree of 1 July 1926 [1] actions with respect to the drawing up of new conditions of employment may be brought even if a collective contract has been concluded and even before the expiry of the period of validity of the contract as prescribed therein, provided that a substantial change in the circumstances existing at the time of the conclusion of the contract is proved to exist.

Similarly, the *Mexican* Labour Act of 18 August 1931 [2] provides in section 56 (Chapter II : Collective Contract of Employment) that, " every collective contract, whether for an indefinite period, a fixed period, or specified work, shall be subject to complete or partial revision every two years at the request of any of the contracting parties, on the following conditions, viz. — if the employees' industrial associations so request, the revision shall be effected, provided that the applicants represent not less than 51 per cent. of the total number of members of the industrial association which concluded the contract ; if the employers so request, the revision shall be effected, provided that the applicants employ not less than 51 per cent. of all the employees affected by the contract. The application for revision, by whichever party it is submitted, shall be made not less than sixty days before the expiration of the contract. If the parties fail to come to an agreement during this period or withhold their consent to the prolongation of the said period, the matter shall be referred to the competent conciliation and arbitration board for decision ; during the proceedings before the board, the contract the revision of which is under discussion shall remain in operation ".

Further, under section 65 of the same Act, a generally binding contract may, at the request of the employers and employees who represent the majority mentioned in section 58, be subjected to revision by the Federal Executive within a time-limit of three

[1] *Legislative Series*, 1926, It. 5.
[2] *Legislative Series*, 1931, Mex.

months or at any other time when the existing economic conditions justify such a step.

In *Great Britain*, under section 54 of the Cotton Manufacturing Industry Act of 28 June 1934,[1] the Minister of Labour has power, on request from either of the organisations concerned, to reject an Order setting out rates of wages, provided such Order has been in operation for at least 12 months.

The procedure for revocation is much the same as that followed when the Order is made (see p. 94, above). In the event of imminent national danger or great emergency, however, the Minister may, without any such proceedings, revoke the Order by Order.

In *Canada*, under section 5 of the Quebec Act of 20 April 1934 respecting the extension of collective labour agreements,[2] the Lieutenant-Governor in Council may at the request of the parties repeal or amend the Order-in-Council extending the application of a collective agreement.

Under section 31 v *(f)* of the *French* Act of 24 June 1936 an order to extend a collective agreement to third parties will cease to have effect when the parties concerned agree to denounce, revise or amend it. It may also be cancelled by the Minister of Labour by an order, issued in the manner prescribed in sections 31 v *(d)* and *(e)*, when it becomes apparent that the collective agreement no longer meets the economic requirements of the branch of industry or commerce concerned in the district in question.

According to section 28 of the *Chinese* Act of 1 November 1932 the administrative authorities may, at the request of either of the contracting parties, prematurely terminate a collective agreement if, since the agreement came into force, there have been profound changes in the economic situation of the undertakings.

Finally, in *Germany*, labour regulations may be amended, revised or abrogated by the labour trustees who have promulgated them.

It appears from the examples cited above that, while affording the greatest possible measure of stability in collective agreements, legislation in a great many countries has been able to provide remedies for the disadvantages which might attend exclusive rigidity in such agreements.

[1] *Legislative Series*, 1934, G.B. 7
[2] *Legislative Series*, 1934, Can. 5.

Expiry of collective agreements. — Collective agreements or similar regulations normally expire when the time-limit placed on their duration is reached. Nevertheless, and this is an important reservation, most laws provide that the agreement shall expire only when formal notice of termination has been given within a specified time ; in the absence of such notice, the collective agreement is considered to have been renewed for a period equal to that of its initial validity, or to have been prolonged for an indeterminate period.

Further, in cases of *force majeure* (e g. when the undertaking is wound up, if the collective agreement applied to one undertaking only ; intentional and substantial violation of the agreement by one of the parties, etc.) a collective agreement may be terminated either wholly or in part before the normal date of expiry.

On the other hand, certain extraordinary causes of termination which are recognised in ordinary law do not apply in the case of collective agreements. Thus, to mention only outstanding examples which are to be found in most laws concerning collective agreements, if one of the parties ceases to have power to enter into a contract (loses legal personality), if one of the contracting organisations is dissolved, or even if one of the parties to the agreement disappears (death of an employer bound by a collective agreement, cession or transfer of the undertaking) the agreement does not necessarily lapse.

The reason for this is that a collective agreement is not exclusively, nor even mainly, a contract between the parties (trade associations and unions) but also, and above all, an instrument regulating conditions of employment for the persons it covers.

Moreover, on the employer's side the purpose of the agreement is not so much to bind the individual employer as the undertaking, the trade or the industry concerned. It follows that the heir, in the event of the death of a party to a collective agreement, or the person who acquires an undertaking under any title whatsoever, in cases of cession or transfer, automatically takes over the rights and obligations of the employers who were originally bound.

Similarly, on the workers' side, the loss of legal personality or the dissolution of a trade union which is a party to an agreement only involves incapacity to enter into agreements in future but does not relieve the workers of their obligations under collective agreements which are already in force.

The Effect of Collective Agreements after Expiry. — Obviously the result of expiry is that the collective agreement ceases to be operative. The expiry of individual contracts of employment, however, may not always coincide with that of the collective agreement which determined their content. When it does not, the conditions of employment laid down in the agreement continue to apply even after the latter has ceased to be in force and until the contracts themselves expire. Further, certain stipulations in the collective agreement, such, for instance, as the undertaking given by the employer to pay the wage-earner a pension, or that of the wage-earner not to compete with his employer until a certain space of time has elapsed, continue to apply even after the collective agreement has expired, since by their very nature they cannot become effective during the validity of the agreement.

The expiry of collective agreements and similar regulations raises a further legislative problem. As is well known, it is the renewal of collective agreements, during the period between the expiry of the old and the conclusion of the new agreement, when there is no contractual regulation in force, that gives occasion for the outbreak of the most serious labour disputes.

It has already been seen that, in order to overcome this difficulty, collective agreements are under most laws presumed to have been tacitly renewed when the date of expiry has been reached. With the same object in view, certain laws and regulations compel the parties to submit to conciliation before the agreement expires.

Such measures have certainly helped to lessen the risk of disputes breaking out during the period when there is no contractual regulation, but they do not completely eliminate that risk.

Several recent enactments, for instance, the *Danish* Act of 31 January 1933, the *Czechoslovak* Decrees of 15 June 1934 and 29 April 1935, have compulsorily extended by one year the validity of collective agreements which were in force when they were promulgated. In both cases the enactments were emergency measures introduced to avoid serious labour disputes which seemed likely to break out when the agreements expired and to prevent an expected fall in wages.

On the other hand, attempts have been made in two countries to solve the problem once and for all by legislation.

The *Italian* Act of 25 January 1934 provides in section 3 that collective agreements which have expired shall continue to be operative until a new agreement has been concluded or until

an award has been made, in lieu of an agreement, by the Labour Courts.

Similarly, the *Australian Commonwealth* Conciliation and Arbitration Act provides in section 28, paragraph 2, that after the expiration of the period specified in the award, the latter shall, unless the Court otherwise orders, continue in force until a new order has been made.

The purpose of such legislation is to bridge over the period which separates the old from the new contract and so to confer on the parties all the advantages that the continuity of collective regulation affords, while enabling them to adapt conditions of employment to any new economic circumstances which may have arisen.

Territorial and Occupational Scope of Collective Agreements

It is in this respect that legislation leaves the parties concerned the greatest measure of freedom of judgment and of decision. Most laws require the contracting parties to define the territorial and occupational scope of their collective agreements but leave them free to limit that scope as they think best.

Moreover, given that industrial relations are highly complicated, that there is the greatest variety in the operations performed in any one industry and that conditions of employment vary in different economic regions, it would — unless, as will be seen later, economic activities are classified first — be very difficult to lay down in advance the territorial and occupational framework into which collective agreements will have to fit.

In practice, the territorial and occupational scope of collective agreements is determined by the field of action and the organisation of the parties, that is, of the trade associations and unions.

As regards territory, since legislation does not confer power to conclude collective agreements on local unions alone but also on their federations, collective agreements may cover one or more undertakings, a given locality, a district or the whole country, according as the parties to the agreement are works unions, local trade unions or national federations.

As regards occupation, the agreements may cover only a single trade or skilled occupation, if the unions are organised on an occupational basis, or on the contrary cover a whole industry when trade union organisation is on an industrial basis.

But however extensive and comprehensive the agreements may be, their flexibility permits of the parties adapting them

to the diversity and complexity of the relationships to be regulated.

Thus in the case of agreements with a comprehensive scope, a distinction is usually made between basic agreements in which the general conditions of employment to be applied throughout the industry (such as hours of work, holidays with pay, methods of calculating wages or even minimum wage rates) are laid down, regional agreements which allow for requirements in a given region, and finally wage agreements, which are usually concluded for a shorter period than the basic agreements and specify the wage rates payable to different classes of wage-earners, e.g. manual workers, unskilled workers, skilled workers, technical employees, adolescents, women, aged workers, etc.

But while most laws do not limit the territorial and occupational scope of collective agreements beforehand and in detail, they may, nevertheless, by determining trade union and occupational organisation, broadly outline the framework of collective regulation. In this respect it may be mentioned that in many countries, e.g. *Austria*, *Australia*, *France*, *Italy*, *Mexico*, *New Zealand*, *Portugal*, *Spain*, *Union of South Africa*, *United States* and *U.S.S.R.*, power to conclude collective agreements has been conferred only on the largest union in a given trade, the most representative unions or those which are officially recognised. Similarly, in other countries power to conclude agreements has been conferred only on national federations and confederations.

Thus, in *Italy*, under the Royal Decrees of 16 August 1934 issued in pursuance of section 7 of the Act of 5 February 1934, respecting the constitution and functions of the corporations, with a view to bringing trade union organisation into line with that of the new corporations, legal recognition is henceforth to be granted only to the national trade federations and the national associations for a given industry or occupation, and therefore these bodies alone will have power to conclude national agreements, subject to approval by the national confederations to which they belong.

Similarly in *Austria*, under the Order of 2 March 1934 concerning the Confederation of Austrian Workers and Salaried Employees (completed and amended by the Order of 3 December 1934 defining the rules of that Confederation) and the various Orders concerning employers' confederations, responsibility for concluding, amending or terminating collective agreements under the supervision and with the approval of the national confederations lies with the national trade unions.

Again in the *U.S.S.R.*, in principle the central trade unions are responsible for organising collective employment relationships.

In all countries where the collective regulation of employment conditions is controlled by the central bodies in the trade union system, collective agreements can and will normally extend to all occupations or industries within the widest possible territorial limits.

This is in the nature of a facility, and the parties are free to make use of it with a view to giving their agreements as wide a scope as possible, but there is nothing to prevent their allowing, when they draw up their agreements, for geographical and occupational conditions, or even concluding agreements which apply only to one locality or undertaking, where circumstances make this necessary.

The tendency to lay down beforehand the territorial and occupational framework of collective agreements is even more marked when collective systems of regulation are based on occupational or industrial organisation.

It has been observed that the organisation in question may be that of a single industry, as in *Great Britain* (Cotton Manufacturing Industry Act of 28 June 1934) and the *U.S.A.* (Act of 30 August 1935 respecting the coal industry), or that of a whole series of industries as in *Spain* (Act of 27 November 1931-16 July 1935 concerning joint labour boards in industry and agriculture) and the *Netherlands* (Act of 7 April 1933 respecting the organisation of industrial councils).

In the last-named country, it may be noted that industrial councils are set up in the various occupations as and when the need arises, whereas in *Spain* the occupations and industries for which joint labour boards have been set up were at the outset classified in 24 principal groups, these being in turn subdivided with reference to specialised occupational categories.[1]

It should be added that the Codes of Fair Competition in the *U.S.A.* (under the rescinded National Recovery Act of 16 June 1933) were based, and that the corporations in *Italy* are still based, on an industrial and occupational organisation which is no longer confined to employment relationships but also covers economic relationships. In Italy, as is known, 22 corporations were instituted under the Act of 5 February 1934 respecting the constitution and functions of corporations. These 22 corporations

[1] *Legislative Series*, 1931, Sp. 15, section 4.

were divided into three groups, each corporation in the first representing a cycle of agricultural, industrial and commercial production, each in the second a cycle of industrial and commercial production and the third the service industries and occupations.[1]

Under all these systems the territorial and occupational scope of collective agreements or regulations is laid down at the outset in the Act.

But here again the scope of the regulation is not extended at the expense of flexibility. The agreements or decisions given by industrial committees or corporative organisations are, it is true, binding on all persons, whether salaried employees or wage-earners, working in the occupation or industry considered, but they do no more than fix, just as the basic agreements in purely contractual systems do, general conditions of employment, i.e. minimum stipulations, which will, by special collective agreements, be completed or adjusted to the regional or occupational requirements of the industry.

Finally, it will suffice to mention the bodies responsible for regulation under compulsory systems: industrial arbitration courts in *Australia* and in *New Zealand*, labour courts in *Italy*, and labour trustees in *Germany* have power to determine at their discretion and within the limits of their territorial competence, the scope of collective regulations. However, although they give the agreements as wide a territorial and occupational scope as their legal competence permits, they are also free to limit such scope to a single locality or to given undertakings, or again to allow any exceptions or exemptions which may, owing to the particular circumstances of individual undertakings, seem necessary.

In short, however wide the territorial and occupational scope of collective agreements may be, care has been taken in drafting legislation to ensure that they shall be as flexible as is necessary to allow for all possible circumstances.

Scope of Collective Agreements with reference to Persons

Since the significance of collective regulation is to some extent measured by the number of beneficiaries, minute and detailed attention has been given to the problem of determining the scope of collective agreements with reference to persons. The methods adopted will be described very briefly.

[1] Cf. the complete list of corporations in the *I.L.O. Year-Book* 1934-35, p. 375.

As a general rule, at any rate under contractual systems, collective agreements apply at the outset not only, as they clearly must, to the organisations which are parties to the contract and which have signed the agreement, but to all members of such organisations. They do so either in virtue of a mandate tacitly implied in the contract of association or in virtue of a specific mandate given prior to conclusion of the agreement or subsequently confirmed.

This is in fact merely an application to collective agreements of the rule of ordinary law in regard to mandates.

Questions which arise when third parties come into an existing agreement or when parties withdraw from collective agreements are likewise settled with reference to the ordinary law of contract.

Organisations, groups or isolated employers (employers being in all cases treated as collective bodies) may only become parties to an existing agreement subject to the consent of the parties originally bound by that agreement.

Individual wage-earners may only become parties to a collective agreement indirectly by joining one of the organisations which are parties.

As regards withdrawal from or non-acceptance of a collective agreement, a distinction must be drawn between collective agreements which have been concluded for a fixed period and those which have an indeterminate validity.

If the agreement has been concluded for a fixed period, the original parties or any parties which subsequently come into the agreement are bound throughout the period during which the agreement is to remain in force, unless the latter is altered or terminated by common consent. Members of the organisations which are parties to the agreement may on the other hand withdraw from the latter by retiring from the organisation, provided this is done within a fixed period (generally a very short one, varying from three to eight days) which begins to run from the date at which the agreement legally comes into force.

If the collective agreement has been concluded for an indeterminate period, the contracting parties may withdraw from it at any time, provided that they give legal notice of withdrawal (varying under different laws from one to three months) and inform the other parties. Since, so far at least as the workers are concerned, the only parties to the agreement are the trade unions, the withdrawal of a union clearly involves that of its members.

The members of an organisation which is a party to a collective

agreement may at any time withdraw from the latter by ceasing to be members of that organisation within the time-limits laid down in the Act.

Further, in cases where there are several contracting parties, the withdrawal of any one of these does not automatically release all the others from the contract, but under most laws it affords them an opportunity of giving notice.

It should be added that where the principle of freedom to conclude collective agreements applies, there is nothing, even in an industry, occupation or undertaking already covered by a collective agreement, to prevent rival trade unions from concluding other collective agreements on their own behalf and on that of their members.

It follows from this very rapid survey of principles that in purely contractual systems, collective regulation of conditions of employment is exclusively a matter for the contracting parties and in no way concerns third parties, even if these are, as in the particular case under consideration, wage-earners engaged in the undertakings covered by the collective agreements. Third parties are therefore free to depart from the conditions laid down in the agreement and to consent to other conditions of employment which are less favourable than those laid down by collective regulation.

In fine, purely contractual regulation does not exclude, but to some extent makes for variety in the systems of regulating employment conditions, often within the same industry, the same occupation or even the same undertaking.

Now it is important to note that this variety in systems of regulation is not due to differences, in actual conditions of employment or in industrial operation, for contracting parties would be in a position to allow for such differences, either by agreeing to exclude handicapped undertakings from the territorial or occupational scope or by making provision for all the necessary exceptions and exemptions in the agreement. The differences in question are simply due to the fact that the persons concerned may or may not be members of the unions which have signed the agreement.

No doubt in countries where trade union and occupational organisation has developed to a considerable extent and where it is, moreover, highly centralised and standardised, collective agreements do in fact apply to all the wage-earners in the undertakings they cover, even if such wage-earners are not trade

unionists. This extension usually takes place by common consent between the parties, though such a stipulation would appear to be binding on the contracting parties alone and not on third parties.

In cases where these conditions do not hold good, the consequence of competitive bargaining and of the fact that collective agreements do not apply to third parties may be so serious that, in most countries, legislative steps have been taken to overcome the difficulty either by direct measures designed to lessen trade union or contractual competition in the labour market, or by indirect measures the object of which is to extend, as far as possible, the personal scope of the agreement.

The first type of measure has already been considered when dealing with the methods of drawing up collective agreements, and reference to the remarks made in that connection should suffice. Measures of the second type will be briefly analysed here.

The first step towards extending the personal scope of collective agreements, a step which is taken in most laws, is to make such agreements legally applicable to all wage-earners, even those who are not members of a trade union, in an undertaking or occupation where the employer or employers are themselves bound by the collective agreement. In some countries this only happens in virtue of a legal presumption. In the absence of any other agreement, wage-earners are then automatically covered by the collective agreement. In most other countries, however, such application is compulsory in virtue of the Act and consequently over-rides any exceptional agreements.

The second measure consists in prohibiting any withdrawal from the collective agreement during the period for which the latter has been concluded.

Both these measures are designed to stabilise and standardise, for a minimum period of time, conditions of employment in undertakings where the employers are themselves parties to the collective agreements. In fact, such legislation merely gives full effect to the wishes of the contracting parties, without, however, going beyond the contractual scheme on which the parties have agreed.

On the other hand, in the systems which will now be considered, the purpose of the measures adopted is mainly to extend collective regulation to third parties such as employers and wage-earners who are not covered by the collective agreement but who are engaged in an occupation coming within the territorial and occupational scope of that agreement.

Measures taken to this end vary according to countries. They may do no more than confer either on the Government — that is, in most cases on the Minister of Labour, or on arbitration and judicial bodies, the faculty to extend the scope of the collective agreements so as to cover third parties ; or, in the other extreme, application to third parties may be compulsory under the Act.

The following is a summary of such measures :

1. *Extension of collective agreements to third parties by administrative measures.* — This is the method adopted in *Brazil* (Decree of 23 August 1932, section 11 [1]) ; in *Canada :* Quebec (Act of 20 April 1934, section 2 [2]) ; Alberta and Ontario (Acts of 1935 concerning industrial standards [3]) ; in *Czechoslovakia* (Order of 29 April 1935 concerning collective agreements in the textile industry [4]) ; in *Great Britain* (Act of 28 June 1934, sections 1 and 2 [5]) ; in *Mexico* (Labour Code of 18 August 1931, sections 58 to 67 [6]) ; in the *Union of South Africa* (section 9, paragraph 4, of the Acts of 28 May 1930 and 7 March 1933 [7]), in *France* [8] (Act of 24 June 1936, sections 31 v*(d)* and 31 v*(e)*) and in *Greece* [9] (Act of 16 November 1935, section 6).[10]

In all these countries the procedure for extending the scope of collective agreements to cover third parties is governed by a certain number of conditions of form and substance, the details of which may vary though in essence they are the same. They may be summed up as follows.

The most important of the conditions of substance, which is to be found in all systems, is that the extension of an agreement to third parties may not be applied for unless that agreement is already predominant in its own territorial or occupational field, either by reason of the number of persons covered (50 to 75 per cent. of the workers concerned) or by reason of the questions with which it deals ; i.e. wages, hours of work, etc. The Order extending the agreement is not issued automatically but only at the request of the parties to the contract or of the trade organisations ; in other words, on the initiative of those concerned.

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[1] Cf. *Legislative Series*, 1932, Braz. 6.
[2] Cf. *Legislative Series*, 1934, Can. 5.
[3] Cf. *Legislative Series*, 1935, Can. 3.
[4] Cf. *Legislative Series*, 1935, Cz. 1.
[5] Cf. *Legislative Series*, 1934, G.B. 7.
[6] Cf. *Legislative Series*, 1931, Mex. 1.
[7] Cf. *Legislative Series*, 1930, S.A. 5 ; 1933, S.A.
[8] Cf. *Legislative Series*, 1936, Fr. 7.
[9] Cf. *Legislative Series*, 1935, Gr. 7.
[10] Cf. also : *Legislative Series*, 1936, I.F.S. 1.

In order that third parties may be informed of the measure contemplated and may be in a position to state their views or objections, if any, the request for the extension of a collective agreement must in most countries be published. When publishing such request, the authorities mention a time-limit within which any objection or opposition must be made and given a hearing.

When the time-limit has expired, the competent authority is free to take any decision it thinks fit in regard to the request. It may either accede to or reject the request without appeal.

Under some laws the declaration or decree need do no more than extend the collective agreement to third parties without altering it, or, on the other hand, it may alter the duration of the agreement, provide for exceptions or exemptions in favour of certain undertakings, authorise revision within a given period or under certain conditions, etc.

Again, the extension may in some cases be effected only with respect to certain conditions of works : wages in Great Britain, or wages and hours of work in Canada ; or again it may cover conditions of work as a whole.

Such in brief is the procedure under systems which allow for the optional extension of collective agreements to third parties. Stress must be laid on the fact that in all countries parties make use of this procedure not by way of exception but in the normal course of events. Moreover quite a number of laws, more particularly the Act passed in Great Britain and the Canadian Acts, have been specially drafted with this end in view.

2. *The extension of collective agreements or arbitration awards to third parties by conciliation or arbitration.* — This is the method adopted in *Austria* (Act of 18 December 1919, sections 16 to 19 [1]), and in *Australia* both in the Commonwealth legislation and in that of various States, and in *New Zealand*. It will suffice to summarise, by way of example, the provisions of the *Australian* Commonwealth Conciliation and Arbitration Act and the *New Zealand* Act of 8 June 1936.

Under section 38 *(f)* and *(g)* of the Act of 22 June 1928 (consolidated text [2]) the Court of conciliation and arbitration

[1] Cf. *Legislative Series*, 1920, Aus 22.
[2] Cf. *Legislative Series*, 1928, Austral. 2.

has power to declare by any award or order that any practice, regulation, rule, custom or term of agreement, condition of employment or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry in connection with which the dispute arises.

Before declaring a common rule, the Court must pay due regard to the extent to which the industries or the persons affected enter or are likely to enter into competition with one another. Further, before any common rule is so declared, the Court must by notification published in the *Gazette* and in such other publications, if any, as the Court directs, specify the industry and the industrial matter in relation to which it is proposed to declare a common rule, and make known that all persons and organisations interested in and desirous of being heard may, on or before a day named, appear or be represented before the Court. The Court must, in the manner prescribed, hear all such persons and organisations appearing or represented.

Further, the Court has power to direct with due regard to local circumstances within what limits of area, if any, and subject to what conditions and exceptions, the common rule so declared is binding upon the persons engaged in the industry whether as employers or employees, and whether members of an organisation or not.

Under section 23 of the *New Zealand* Act of 8 June 1936 the Arbitration Court has power to extend an award so as to join and bind as party thereto any (and not merely any specified) trade union, industrial union or association, or employer in the same industry, even if the award does not relate to a trade or manufacture the products of which enter into competition with those manufactured in another industrial district and in which a majority of the employers and unions of workers are bound by the award , the previous legislation had contained a proviso limiting the power of the Court in this case. However, the Court may not extend an award to cover any employer unless a majority of the employers in the district who are engaged in the industry to which it relates are already bound by it.

Further, the Court may, on application within one month of the making of any order extending an award to unspecified unions or employers, grant exemption from it.

3. *Automatic statutory extension to third parties of collective agreements or of compulsory awards.* — This procedure is followed

in *Germany* (Act of 20 January 1934, section 32 [1]); in *Italy* (Act of 3 April 1926, section 10 [2]); Decree of 1 July 1926, section 57 [3]; Labour Charter of 21 April 1927, section III [4]); in *Portugal* (Decree of 23 September 1933, section 33 [5]); in the *United States* (Act of 5 July 1935, section 9 [6]); and in the *U. S. S. R.* (Labour Code of 9 November 1922, section 16 [7]).

It should be pointed out that in the *United States* the extension of collective agreements to third parties is a consequence of the fact that the trade union representing the majority of the workers in a given district, occupation or industry, is, as regards the conclusion of collective agreements, considered to be the sole representative of all the wage-earners, whereas in other countries only legally recognised organisations have power to conclude collective agreements applicable to all the wage-earners and all the employers they represent, whether such wage-earners and employers are members of the organisation or not.

Similarly, in *Germany* collective regulations promulgated by the Labour Trustees are binding on all the persons concerned who come within the territorial or occupational scope of such regulations.

Finally it will be remembered that in *Spain* (Act of 27 November 1931–16 July 1935, section 19 [8]) and in the *Netherlands* (Act of 7 April 1933, section 19 [9]), occupational agreements concluded by the joint labour boards or industrial councils are binding on all persons, whether employers or wage-earners, engaged in the industry or the occupation for which such agreements have been drawn up.

In conclusion, it may be said that by the various means which have been mentioned, legislation has sought so far as possible to convert collective agreements which are normally limited to the members of the contracting organisations into regulations applicable throughout the occupation concerned.

[1] *Legislative Series*, 1934, Ger. 1.
[2] *Legislative Series*, 1926, It. 2.
[3] *Legislative Series*, 1926, It. 5.
[4] *Legislative Series*, 1927, It. 3.
[5] *Legislative Series*, 1933, Por. 5.
[6] *Legislative Series*, 1935, U.S.A. 1.
[7] *Legislative Series*, 1922, Rus. 1.
[8] *Legislative Series*, 1935, Sp. 3.
[9] *Legislative Series*, 1935, Neth. 1.

CHAPTER V

THE APPLICATION OF COLLECTIVE AGREEMENTS

In practice, all sorts of difficulties may arise when collective agreements and other collective methods of regulating conditions of employment are to be applied. Thus, the legislative authorities have two tasks before them : on the one hand, the enforcement of the agreements and regulations must be secured, while, on the other, appropriate measures must be taken to settle any disputes to which the application of agreements may give rise. This involves the introduction of legislative measures organising the supervision of collective agreements and laying down penalties for breach of agreement.

So far as the collective agreements form an autonomous system of regulation, such supervision and sanctions are, as has already been stated, determined by the agreements themselves.[1]

I. — Measures of Supervision

Generally speaking, if a conciliation authority is responsible for following up changes in conditions of employment, it may, in order to take the necessary action in time, have to supervise the operation of collective agreements (cf. the Danish Act of 18 January 1934, section 2). Similarly, factory inspectors whose duty it is to see that social legislation is enforced must also supervise the application of collective agreements, more especially with reference to certain Acts, for instance, those dealing with hours of work.

Under the *Australian* Acts which provide for compulsory arbitration, the duties of factory inspectors include that of seeing that awards and collective agreements are enforced. For this purpose, inspectors may enter any premises where work is done and must make any necessary investigations and reports (cf.

[1] Cf. above, pp 63 *et seq.*

Commonwealth Act, sec. 50 A; Queensland Act of 1932, sec. 76, etc.). In countries where minimum conditions of employment are laid down by joint labour boards or industrial councils, such bodies may as a rule supervise the application of their decisions. In *Spain*, under the Act of 27 November 1931, the joint labour boards are responsible for securing the observance both of their own decisions and also of individual and collective contracts. With this end in view, they may appoint inspecting members who are treated as assistant inspectors in the general service of the labour inspectorate (sections 19, 20, 32 *et seq* of the Act).

Special bodies may be set up to supervise the application of collective agreements. In *Canada*, in the province of Quebec, the parties to a collective labour agreement made obligatory under the Act of 20 April 1934 must set up a joint supervisory committee, to which the Minister of Labour may add two delegates designated by the employers or employees who are not parties to the agreement. In the province of Ontario, under the Industrial Standards Act of 18 April 1935, the Minimum Wage Board has power to enforce the provisions of the Act.

In countries where laws have been enacted concerning works committees or councils, such bodies may have to supervise the application of collective agreements. That, prior to 1933, was the case in *Germany* under the Act of 1920 concerning works councils. In *Austria*, the works councils set up by the Act of 1919 and the works communities for which provision is made in the Act of 12 July 1934, have authority to supervise the application of collective agreements. So have the works councils which are set up in *Czechoslovakia* under the Act of 1921.

Finally, in the *U.S.S.R.* the workers' representatives in each undertaking have extensive powers of supervision, and in *Italy* the application of collective agreements is supervised by the corporative inspection service.

II. — Penalties

The nature of the penalties and the way in which they are enforced depend on the type of legislation enacted concerning collective agreements or other methods of regulating conditions of employment. As a general rule, the principles applied to collective agreements are those of the ordinary law of contract. But since in practice it is difficult to apply these principles thoroughly, legislation has in several countries been introduced

either to adapt the principles of ordinary law to the special requirements of collective agreements or to substitute for such principles other measures which are considered more satisfactory.

Rights and duties of individual employers and workers. — According to the principles of ordinary law, collective agreements take effect as regards both the individual employers and the workers who are bound by such agreements, in rights and duties created by contracts of employment. Any breach of a collective agreement must therefore be a breach of an individual contract in order to justify payment of damages, termination of contract, etc. That is still the legal position in many countries. However, under quite a number of laws, collective agreements directly confer rights and lay duties on the persons to whom they apply, and breaches of such agreements entail legal consequences for which provision is made in the Act. This being so, according to the principles of ordinary law, legislation may either compel persons committing a breach of the Act to pay damages, or it may make provision for disciplinary measures and penalties. In any event, an employer or a worker may be held responsible only if he has been guilty of an offence.

Damages. — Many Acts (in France, Latvia, Mexico, Netherlands, Sweden, etc.) expressly provide for the payment of damages. Even when this obligation is not expressly stipulated, it follows from the wording of an Act which declares that a collective agreement is binding upon the employers and workers (Chile, Estonia, Rumania, etc.).

In principle, the amount of the damages payable corresponds to the loss inflicted. Nevertheless, some Acts limit the amount in the worker's favour (Sweden), lay down a fixed penalty (Canada, Quebec : 20 per cent. of the wages in dispute), or even allow of granting exemption from all liabilities to pay damages if such exemption seems reasonable (Sweden).

Disciplinary measures. — As a rule, trade union rules provide for disciplinary measures in the event of a member breaking such rules, particularly in connection with collective agreements. Provision is made for such measures in *Italian* legislation.

The *German* National Labour Act of 20 January 1934 likewise provides for disciplinary measures. Under this Act the courts of honour may inflict penalties for any serious lack of loyalty

to the undertaking either on the part of the employer or on that of the worker. The penalties mentioned are warning, reprimand, withdrawal of the right to be head of the undertaking or workers' representative, and loss of employment.

Fines and penalties. — Under section 10 of the *Brazilian* Act of 23 August 1932, collective agreements are to include penalties for breach of agreement. The amount of the fine is lower for workers and their organisations than for employers or employers' associations. Under section 7 of the *Finnish* Act of 22 March 1924, fines are inflicted on employers or workers who intentionally act in contravention of collective agreements. The maximum fine stipulated in the case of an employer (5,000 marks) is considerably larger than the maximum which may be inflicted on a worker (500 marks). However, such penalties may be altered, or even suppressed, by collective agreement.

Similarly, in *Australia* (Commonwealth Act) fines are inflicted for breach of collective agreements. Such fines should be stipulated in the agreements. If they are not, the maximum amounts mentioned in the Act apply.

As a rule, laws and regulations concerning joint labour boards or industrial councils also provide for sanctions. For instance, under the *Spanish* Act of 27 November 1931, joint labour boards may inflict fines. The *Netherlands* Act of 7 April 1933 concerning industrial councils even mentions imprisonment.

In *Great Britain*, the Cotton Manufacturing Industry Act of 28 June 1934, and the *Canadian* Act already cited respecting the extension of collective agreements, provide that penalties shall be inflicted on persons committing a breach of collective stipulations which have been declared binding on third parties.

Under systems of regulation which lay down minimum wage rates and make arbitration compulsory, sanctions attach to all the decisions of industrial councils and awards of arbitration courts or boards. Finally, in certain countries, penal codes include special provisions concerning collective agreements and similar regulations. For instance, section 509, para. 1, of the *Italian* Penal Code provides that an employer or worker who fails to observe the stipulations of a collective agreement or the decisions of the competent corporative bodies may be punished by a fine amounting to not more than 5,000 lire.

Procedure. — If the obligation to pay damages is disputed, the case must be submitted to a judicial body. However, in cases where

the collective agreement provides that such disputes shall be submitted to conciliation and arbitration authorities, this stipulation usually takes precedence over the official procedure.

According to the different legislations, ordinary courts, special courts, labour courts, wage boards, and, in certain cases, conciliation and arbitration bodies, have power to deal with disputes arising out of collective agreements.

If the collective regulation of conditions of employment is accompanied by penal sanctions, the application of these must depend on the decision of some official authority. Such penalties may be inflicted either by the ordinary penal courts or by factory inspectors, who are given power to impose fines, or, again, by bodies which are responsible for laying down conditions of employment (industrial arbitration courts, joint boards, etc.).

The responsibility of trade associations and unions. — When trade associations or unions are parties to a collective agreement, or are involved in procedure for regulating conditions of employment, legislation must decide how far such organisations may be held responsible for any breach of the collective regulations, and must further determine the legal consequences of such breach.

Collective responsibility. — In order that a trade association or union may contract legal obligations, it must have legal personality, otherwise the organisation as such could not be held responsible, and all its individual members would have to answer for the breach. If the organisation is to be answerable, the Act must provide for collective responsibility. This can only attach to the acts of the association or union itself, that is acts performed by an organ of the latter within the competence of that organ, or performed as a result of a decision taken by the association or union in accordance with its rules. Certain Acts deal with this question in detail, either by mentioning the organs concerned *(Australia)* or by laying down the rules of procedure to be followed by associations or unions *(Norway)*.

The question then arises as to whether associations may be held responsible for acts committed by their members. According to the general principles of ordinary law which apply in a great many countries, associations and unions cannot be made answerable for such acts unless they have expressly given guarantees in this respect. The principle is confirmed by several Acts, which provide that associations and unions must do all they can to

ensure that their members will observe the collective stipulations, but are not to be considered as guaranteeing such observance *(Italy, Netherlands)*.

Other laws do, however, make the organisations answerable for deeds performed by their members as well *(Chile, Latvia)*.

Organisations are only responsible for acts performed in contravention of a given stipulation, or of the collective stipulations as a whole. This rule follows from the general principles of ordinary law, and is sometimes expressly confirmed in the legislation.

Rights and duties of associations and unions. — In so far as collective regulations are held to be contractual, an association or union which is responsible for a breach of the regulations is liable for payment of damages. A number of Acts have, however, substantially modified the rules of ordinary law in this respect.

In several countries, associations and unions are required by law to set up a guarantee fund so as to ensure that damages will in fact be paid *(Chile, Italy)*. On the other hand, a certain proportion of the association's or union's funds may be declared free from seizure.

Under ordinary law, there is strict reciprocity between rights and obligations. As regards collective relationships, however, the principle has been substantially modified in favour of trade associations and unions. Under several Acts, any association or union which has concluded a collective agreement may, if one of the other parties, or a member of such party, acts in contravention of their obligations, claim damages not only in respect of any loss it has itself suffered thereby, but also in respect of a loss suffered by its members *(Netherlands*, Act of 24 December 1927, sec. 15 ; *Finland*, Act of 22 March 1924, secs. 9 and 10).

Other laws confer on trade associations or unions the right to bring an action, without having to prove any special mandate, on behalf of one of their members who has suffered a loss owing to a breach of the collective agreement committed by the other party *(Estonia, Finland, France, Italy, Rumania* and *Sweden)*. Under certain laws, a trade union even has this right in respect of any person bound by the collective agreement, whether such person be a member of the union or not *(Finland)*. Generally speaking, an organisation which has power to defend the collective interests of persons engaged in an occupation may naturally bring any actions necessary for this purpose, or become a party to any action. Under the *Canadian* Act (Quebec) of 20 April 1934, the

right to claim damages on behalf of the trade is conferred not on the union but on the joint committee formed by the parties to the agreement.

As regards the assessment of damages, certain Acts depart from the principles of ordinary law. The *Netherlands* Act cited above provides, in section 16, that, " If it is impossible to assess the loss in money, a sum, fixed at a reasonable estimate, shall be granted as damages ". Mention may also be made of the *Swedish* Act, section 8 of which provides, that :

> In deciding whether and to what extent loss has been incurred, the interest of the person concerned in the maintenance of the contract and other circumstances other than those of a purely economic nature shall be taken into consideration.
>
> The amount of the damages may be reduced if this appears reasonable in view of the slight degree of culpability of the person who has caused the loss, the situation of the person who has suffered loss in respect of the occurrence of the dispute, the extent of the loss or other circumstances ; complete exemption from liability to pay damages may also be granted. An individual employee shall not in any case be sentenced to pay damages exceeding 200 kronor.

The *Canadian* Act mentioned above provides that the amount of damages shall be fixed at 20 per cent. of the wages in dispute. A similar provision has been made in *Finland*. Under the Act of 1924, organisations and employers who fail to observe the stipulations of a collective agreement to which they are parties must pay a fine as damages for the other party. In fixing the amount of the fine, consideration is to be given to all the relevant circumstances, more especially to the actual loss caused and to the extent of the responsibility incurred. In the absence of any stipulations to the contrary, the fine must be paid to the person who has suffered a pecuniary loss, if any, and in other cases to the party which has brought the action.

Some laws provide that a collective agreement may be terminated when, owing to a serious breach committed by one of the other parties *(Sweden, Finland)*, or even by an individual worker or employee *(Sweden)*, its observance can no longer be required of one of the parties. In order that such termination may become effective, an award must be given. Under the Swedish Act, the court may also relieve an employer, worker or organisation of all liability under the agreement when any given stipulation of the agreement is not observed and nothing is done to correct this state of affairs, even if the breach is not a serious one.

Finally, public penalties may be inflicted on an organisation.

Under certain Acts, legal personality may be withdrawn, or the organisation may be dissolved if it fails to carry out its undertakings. Under a number of laws, fines may be imposed *(Canada, Australia, Union of South Africa)*.

In many countries, disputes arising out of the application of collective agreements are settled by a judicial procedure, and the conciliation and arbitration authorities take no action unless the dispute bears on the renewal of the agreement.

PART III

THE PLACE OF COLLECTIVE AGREEMENTS IN THE ECONOMIC STRUCTURE OF THE COMMUNITY

Introduction

The earlier parts of this Report have described the scope and structure of collective agreements and the legislation enacted in different countries to regulate them and to extend their scope. Indications have been given of the increasing significance of the rôle assigned by recent legislative measures to collective agreements in the economic organisation of the modern industrial community, based upon a growing recognition of their value not only in the field of industrial relations, but also in the social and economic structure of the State.

In the present Part of the Report, the place of collective agreements in the economic structure of the community is considered, attention being first directed to the relation between collective agreements and State regulation of working conditions. Account is then taken of the tendency in the modern industrial community towards greater standardisation of working conditions, especially within each industry. This provides an economic basis facilitating the collective regulation of working conditions whether by voluntary agreements or by State action. Illustrations are then given of recent State intervention in the normal regulation of working

conditions in order, by rapid and uniform measures extending over a wide industrial field, to bring these conditions into proper adjustment with other factors of the national economic life. The review of such emergency measures is followed by an account of more permanent measures taken by certain States to incorporate collective agreements in the national economic structure.

CHAPTER I

COLLECTIVE AGREEMENTS AND STATE REGULATION

In many countries, there is a wide measure of agreement by organised employers and workers and by the State that the individual method of regulating working conditions independently by each employer is unsatisfactory and that, especially in times of depression, it results in " cut-throat " competition and chaos. The alternative to some method of collective regulation is becoming steadily more important in industrialised countries. Conditions may, however, be determined collectively either by State legislation and machinery or voluntarily by agreement between the parties directly concerned. For some questions State machinery possesses clear advantages, but for others, particularly wages, the method of collective agreement usually provides the most satisfactory basis. In many countries, however, labour standards are regulated partly by the State and partly by collective agreement, and the relative importance of each method and the degree of co-ordination between them varies from country to country according to the political system established and to the degree of development of industrial relations between employers and workpeople.

In some countries voluntary relations have developed so extensively that working conditions throughout a large part of industry are regulated by the method of self-government, and an elaborate code of industrial " by-laws " is applied with little intervention by the State. In such circumstances the State often limits its intervention to : (1) regulating conditions in certain branches of industry to which the system of collective agreements has not extended and in which conditions are found on investigation to be unsatisfactory ; (2) establishing standards on questions for which State action is more suited than collective agreements ; (3) assisting the processes of collective bargaining by systems of conciliation and arbitration.

Among the chief industrial countries, Great Britain is one in which voluntary methods of collective bargaining cover a large part of the industrial field, on the basis of an evolution extending over nearly a century. It is of special interest, therefore, to quote the following passage from a detailed and comprehensive Report on Collective Agreements recently published by the British Ministry of Labour :[1]

> Collective bargaining between employers and workpeople has for many years been recognised in this country as the method best adapted to the needs of industry and to the demands of the national character for the settlement of the conditions of employment of the workpeople in industry. Although collective bargaining has thus become established as an integral part of the industrial system, it has discharged its important function, on the whole, so smoothly and efficiently and withal so unobtrusively, that the extent of its influence is apt to be, if not altogether overlooked, at least underestimated. It has produced a highly co-ordinated system of working arrangements, affecting in the aggregate large numbers of workpeople and defining often with great precision almost every aspect of industrial relations. These arrangements are embodied in a vast number of collective agreements representing in many industries the result of prolonged and continuous development.

The Report also indicates that the effects of the war and especially the post-war reconstruction and readjustment to peace conditions accelerated the rate of growth in importance of collective agreements in Great Britain. Their significance is now much greater than in pre-war years. Not only are agreements concluded for many branches of industry in which collective bargaining was almost unknown before the war, but in many industries national agreements have superseded local agreements, and in some industries agreements which formerly applied to skilled workers only have been extended to semi-skilled and unskilled workers. Further, although many workers and firms are not members of signatory organisations, the agreements have a considerably wider application than that of the membership of the contracting parties, and in many of the most important industries the workers whose conditions of employment are determined directy or indirectly by the provision of collective agreements constitute a high proportion of the total number of workers in these industries.[2]

[1] MINISTRY OF LABOUR : *Report on Collective Agreements between Employers and Workpeople in Great Britain and Northern Ireland*, Volume I, 1934.

[2] See U.K. MINISTRY OF LABOUR : *Report on Collective Agreements*, p. XIII.

Similar developments have taken place in the regulation of working conditions in industry in a number of other countries, among which Denmark, Sweden and Norway are particularly noteworthy.[1] In France, where collective agreements were important only in a few industries (chiefly coal-mining, baking, printing, maritime transport and docks), the National Economic Council lately reported in favour of a development of the collective regulation of working conditions. The report also noted that labour legislation is now covering an increasing proportion of the conditions of employment, in particular hours of work, and is therefore reducing the possible field of action of collective agreements, but referred to the official regulation of working conditions on the basis of agreement between the parties, which is described as " the specifically French form of the collective agreement ". Evidence was submitted showing that the Public Administrative Regulations, Decrees and Orders applying various labour laws, particularly on the 8-hour day, were based either on existing collective agreements or on agreements reached in joint committees representative of employers and workers.[2]

As a consequence of the agreement concluded in June 1936 (cf. p. 85 above) between the General Confederation of Production in France and the General Confederation of Labour, the movement in favour of collective agreements gained new strength. A network of agreements now covers most of the industries in the country.

Where conditions are favourable to the conclusion of collective agreements this method has claims to be regarded as superior to other forms of collective regulation. In reaching agreements, the parties directly concerned know at first hand the economic conditions of the industry and the social standards of the workers, and they can also effectively supervise the application of agreements. Even where the State intervenes, the conditions which it establishes are limited to those which are tacitly approved by the employers and workers and which are practicable in view of prevailing economic conditions. Very largely, national legislation establishes some general principle and provides for the setting up of machinery, in the operation of which representatives of

[1] See Appendix I, which gives statistics of collective agreements for the few countries which publish such data. More information is available about industrial disputes, the statistics of which are given for a number of countries in Appendix II.

[2] Conseil National Economique : *Les Conventions Collectives de Travail*, 1934.

employers and workers participate, for the practical application of this principle. This method, for example, is almost invariably adopted when the State intervenes for the purpose of regulating minimum wages. It is often merely a modified system of collective agreement, especially where the authority of the State is kept very much in the background. Sometimes the method is regarded as a stepping-stone towards completely independent collective bargaining.

Until comparatively recent years the main purpose of State intervention for the regulation of working conditions was humanitarian, but increasing emphasis is now being placed upon the responsibility of the State for the co-ordination of economic life. Growing intervention in one line has caused the boundary between the field of collective bargaining and that of State legislation and regulation to become less clearly defined. This has led to the development of a tendency, much more marked in some countries than in others, to integrate the system of collective agreements with that of State regulation. The aim seems to be to secure a sufficient co-ordination of the factors of economic life while preserving elasticity and a certain degree of independence from the rigidity of a highly centralised bureaucratic organisation.

Reference to this evolution, which has come into prominence during the depression, was made in the *Report of the Director* to the 1935 Session of the International Labour Conference, from which the following passage may be quoted :

> The attempt being made in a whole series of countries towards the organisation of industry is one of the outstanding features of present-day economic development. The search for a " half-way house " between complete freedom and complete regimentation, between a State-planned and directed economy on the Russian model and the old system of unregulated competition is being diligently prosecuted along widely different lines. The object in each case, however, is the same. What is sought is some means of reconciling the merits of private enterprise with the need for some measure of discipline and organisation. In country after country and industry after industry efforts have been made to prevent " cut-throat " competition from bringing the producers to bankruptcy and forcing down labour conditions to impossible levels. It has been felt that unless some means could be found to " put a bottom into industry ", to arrest the downward spiral of deflation before prices and wages had sunk too far, catastrophe would overtake the whole economy.

In the regulation of working conditions, the system of collective agreements, supported and extended where necessary by the

authority of the State, seems well fitted to meet these needs of modern industrial organisation. It is founded upon the principle of self-government in industry, and, supplemented and co-ordinated by the State, is capable of gradually assuming a responsible place in the body politic. It preserves a democratic procedure which, when conditions are favourable, ensures harmonious relations as well as an intimate knowledge of the needs of industry. In most countries the State prefers the methods of self-government in industry, while retaining general powers of intervention to prevent abuses, to secure adjustments by measures of economic control during periods of crisis, and to effect co-ordination in the economic development of the country.

CHAPTER II

STANDARDISATION OF WORKING CONDITIONS

An outstanding feature of social evolution during recent decades has been the growing standarisation and co-ordination of working conditions. Collective agreements have made an important contribution towards this development. Increasing standardisation of conditions is mainly the result of improvements in transportation and communication which have had the effect, through increased mobility of labour and goods, of diminishing the variation in methods of production and utilisation of labour in different localities. Formerly economic life was largely localised, and wide differences in standards of productive efficiency and, therefore, in standards of living existed even between regions not widely separated. There are still wide differences, especially internationally, but with a marked tendency towards reduction of inequalities. Information about new inventions and improved methods is quickly disseminated, and competition compels firms to introduce these methods if they are to survive. Thus, the technical organisation of industry is becoming more standardised and this reacts upon working conditions. Also the growth of mass methods of production and of distribution is a factor in diminishing the inequalities of working conditions and standards of living.

Progress in the standardisation of working conditions has been most marked within the national economy. This is indicated by the increase in many countries in the number and importance of national collective agreements and other methods of regulating working conditions on a nation-wide basis. Even in the advanced industrial countries, collective agreements before the war were almost entirely on a local or regional basis. Most of the early agreements were concluded between the trade unions and individual employers. The only standardising factors were the competition of firms for labour and the policy of the trade unions of trying to secure similar terms in their separate agreements with different employers. However, the same factors which, as indicated in the

preceding paragraph, furnished an economic foundation for greater standardisation of working conditions led to regional, national and even international consolidation of trade unions and employers' organisations. This in turn resulted in the establishment of principles for the regulation of working conditions over wide areas, and provided the machinery for the application of these principles in collective agreements of extensive scope.

The evolution has not synchronised in the different countries even among those which are highly industrialised, and in some of them the regulation of working conditions separately by individual establishments still predominates. Also, in certain countries where national agreements are now concluded in many industries, their conclusion is strongly resisted in particular branches of production. Thus, in the British coal-mining industry the coal owners oppose the demands of the Miners' Federation for national wage regulation, and separate agreements are concluded on a district basis.[1]

As already indicated in Part I, although some national agreements fix uniform standards for application throughout a country, others fix different wage rates and conditions of work for each district or alternatively establish general principles which are then applied so that the actual conditions vary from district to district. Thus in Great Britain in the building industry, a national agreement fixes different wage rates for several grades of town, and the agreement specifies the towns within each grade. This method was also adopted in Germany in the former collective agreements, several of which divided the country into districts (Ortsklasse) with differing conditions. In Australia, basic wage rates and other scales of wages have been regulated in this manner.

This method may be regarded as a half-way house on the road to national standardisation. It permits adaptation to local circumstances while it has the advantage of bringing each area under review from the standpoint of the needs of a larger unit than that of any one locality. It is particularly suited to the requirements of the larger countries which are made up of distinct economic regions, and its success within various countries suggests that it might provide a possible basis for international collective agreements. The principle upon which it is founded is already embodied

[1] From 1921 to 1926 general principles of wage regulation operative in all districts were adopted in national agreements and these were applied by joint district boards, but the national agreements were terminated on the insistence of the owners after the 1926 stoppage.

in certain International Labour Conventions. It provides the only possible basis for international wage agreements if these are to fix rates of wages and not merely establish general principles to be observed in the regulation of wages.

The forces tending towards greater standardisation of conditions are first experienced by those industries which are highly competitive. During recent years such industries as iron and steel, engineering, coal mining, cotton textiles, shipping and shipbuilding have been greatly affected in all countries by world factors, while building, printing, and public utility services have been affected only indirectly and often after a considerable time lag. Often in an industry, most firms are prosperous together or depressed together. Consequently, while conditions within industries have tended towards uniformity, marked disparities have arisen in conditions from industry to industry. These are illustrated by the considerable differences which arose in Great Britain during the post-war deflationary period between conditions in the sheltered and unsheltered industries. These different standards react upon one another, but the mobility of capital and labour is so slow that the disparities may persist for many years.

Two consequences of importance in collective bargaining follow from the fact that, in the short period, conditions tend to vary from industry to industry. The first is that the industrial basis is the most convenient for the collective regulation of working conditions, and the second that, where differences in the intensity of competition result in considerable inequalities in standards, demands are made for a modification of the competitive principle. There has been a tendency in many countries to abandon or modify the older craft basis of trade union organisation and of collective bargaining in favour of the industrial basis, which is more closely related to the structure of productive organisation and to the short-term effects of competition. Changes in methods of production have contributed to this evolution, and many trade unions which were originally organised on a skilled craft basis have extended their membership to semi-skilled and unskilled workers within the industry. Employers are generally organised on industrial lines, while, although vertical combinations cutting across industrial divisions are not unfrequently developed, the more common tendency is for the establishment of horizontal associations or cartels of firms within a single industry. These both facilitate the conclusion of collective agreements for particular industries and contribute towards the standardisation of working conditions.

In countries which have introduced schemes for the regulation of working conditions in association with general measures for the co-ordination of the national economic life, the establishment of separate machinery for each of the chief industrial groups is a prominent feature, and usually this machinery is responsible for the determination of conditions according to the special circumstances of each industry. Thus, in the United States a separate code authority was set up for each of a large number of industries to establish conditions of fair competition in accordance with the provisions of the National Industrial Recovery Act In Italy the basis of the corporative system is industrial, while in the Soviet Union the trade union movement is established on industrial lines and concludes collective agreements with the industrial trusts, within the limits defined by the national planning organisations.

Although differences in technical and economic conditions and the complexities of the industrial structure necessitate a system of collective bargaining and regulation of labour standards separately for each industry, some method of inter-industrial co-ordination is often considered desirable. Without co-ordination, differences in economic prosperity result in widely differing wage standards and conditions of work. These inequalities of standard for work-people of similar ability and experience in different industries are socially unsatisfactory. The decline during recent years in the relative wage standards of coal miners, engineers and shipbuilders in various countries which formerly were equal to or even higher than those of printers, municipal and public utility workers, illustrates a change which may persist for many years and for which there is no social justification.

Various methods have been tried for dealing with these fluctuations and consequent inequalities. Some of these are directed to the protection of labour standards while others attempt to deal with the underlying economic causes. Some co-ordination results from the formation of central councils or federations of trade unions and similarly from the formation of employers' associations in which the organisations in the various industries combine for the furthering of their common interests. Or the State, usually in consultation with employers' organisations and trade unions, may intervene and regulate minimum wages, either by fixing basic rates applicable to all industries or by fixing special rates for particular branches of industry and categories of workers whose wages were below the level considered reasonable in the country. The State systems extensively applied in New Zealand

and Australia illustrate the former method, while the latter has been adopted in a larger number of countries, as for home workers in several continental European and South American countries, for women and girls in Canada and the United States, and for all classes of workers in certain British trades for which the Trade Boards system has been introduced. Sometimes, though certainly not inevitably, the fixing of minimum rates of wages may cause some unemployment, which, however, may be preferable to a continuation of work at wages involving misery. Such unemployment then calls for appropriate remedies, including training and transfer schemes, and the fostering of new industrial developments.

Increasing attention is being directed to methods of economic planning, with the object of ensuring a more balanced development of the various industries and of preventing maladjustments from arising which inevitably result in disparities in the demand for labour and in the conditions of employment in different industries. The methods adopted are very tentative in some countries and highly developed in others, but most Governments have extended their co-ordinating intervention during recent years. In most countries international trade is regulated in relation to the actual and potential productive resources of the country, subsidies are granted for the development of certain industries, the use of new capital is controlled, and methods are adopted for an orderly reduction of over-expanded industries. Usually the measures taken are not developed into a consistent plan, but in some countries they are highly integrated. For example in Great Britain, all the measures just mentioned are being applied without, however, being co-ordinated into a planned economy. In the United States the national recovery programme, especially its agricultural adjustment scheme and public works policy, presents distinct features of planning. In Italy, Germany and other continental European countries the Governments have acquired powers of co-ordination which at times are kept in reserve but which on occasion are actively applied. In the Soviet Union, planning covers the whole economic life of the country and is a continuous process. These various methods, whether tentative or developed, are of interest in the present study, as they must take account of the intimate relationship between monetary factors, commerce, production, employment, wages, and hours of work ; also, they usually involve co-ordination of the collective regulation of working conditions, and they tend to reduce the disparities in labour standards between different industries.

Although modern industrial organisation and especially improvements in transportation and communication are steadily extending the area throughout which similar standards of working conditions can be established, the period of time during which unchanged real standards are appropriate has been progressively shortened by the rapidity with which inventions increasing productivity are applied. In earlier times changes in methods of production were infrequent, and, except for the effects of variations in harvests or the results of pestilence and war, standards of working conditions remained unchanged for long periods. Indeed, the condition was often one of stagnation. Nowadays, however, substantial changes in productivity and in standards of living are made in the course of a decade or two. The general level of real wages in most industrial countries has risen steadily with increased use of machine power. Before the war a working week of 53 or 54 hours was common in many industries. It was in general replaced after the war by a week of 48 hours. This was one of the principles included in the Labour provisions of the Treaties of Peace and developed by the Washington Hours Convention. Yet within about fifteen years the course of economic progress had brought the 40-hour week within the range of practical discussion. Alongside these real changes in standards there is the necessity for frequent adaptation of nominal standards to changes in monetary values and price levels and to the fluctuations of the economic cycle. The system of collective bargaining, which enables frequent adjustments in conditions to be made and which brings together employers and workers possessing the most intimate knowledge of industrial conditions and the effects of changes in methods of organisation and productive technique, is well suited to the needs of industry and the economic life of to-day. In many agreements, the process of adjustment is facilitated by the device of the sliding scale, which is capable of still wider application.

Both employers and workers benefit from the standardisation of conditions of work throughout areas in which conditions of work are similar, and from the establishment of " ratio " regulation covering areas with differences in conditions. Workpeople have the assurance that during the period of the agreement they will be protected against a progressive deterioration of their conditions, which, as is shown by the experience of the United States during the years 1930, 1931 and 1932, may proceed so far as to endanger the economic structure of the country. They

also know that, when the agreements are revised, account will be taken of the long-range interests of the industry as a whole and not of the narrow and short-term interests of a particular firm. This advantage accrues to the employers, who are also safeguarded from the exploitation of labour by their competitors. They are therefore likely to concentrate upon reduction of labour costs by improved methods of organisation, instead of seeking to increase their competitive power by lowering labour standards. In this way collective agreements tend to give a stimulus to industrial progress.

The community enjoys these benefits, and it also has the advantage that unduly low standards involving privation and deterioration are as far as possible prevented. Also pressure is put upon firms unable to maintain standards which are generally accepted as reasonable in the industry. If they cannot improve their efficiency they are gradually squeezed out and the community's resources of capital and labour are directed towards more suitable channels. At the same time the agreements can provide in various ways for reasonable flexibility. Thus firms which desire to do so can pay higher rates than those fixed in the agreements, and special arrangements can be made for handicapped workers, or for branches of industry experiencing special difficulties.

In concluding this section, it may be noted that during recent years a policy of economic nationalism has been applied in many countries which has contributed to the co-ordination of economic life and has strengthened the trend towards standardisation of working conditions within national boundaries. Its objects have also included the sheltering of national labour standards from the effects of severe international competition. If successful, this policy would have the effect of resisting the tendency towards greater international standardisation of labour conditions and would result in the long-term maintenance of artificially isolated national standards more or less independent of one another according to the extent to which national self-sufficiency was developed. The interdependence of economic life is, however, so close that, except temporarily and within narrow limits, this policy must result in a lowering of national standards. It is of only short-range significance and can only temporarily interrupt or retard the trend towards less international inequalities of standards.

CHAPTER III

STATE INTERVENTION IN PERIODS OF ECONOMIC CRISIS

In conditions of economic stress and deflation during recent years various Governments have found it necessary to interfere with the ordinary course of collective agreements and other means of regulating working conditions in order to secure a rapid downward adjustment of money wage rates over a wide industrial field. This has been considered necessary in order to bring internal costs of production and prices into closer relation with world costs and prices, and the ordinary processes of adjusting conditions by negotiation industry by industry were regarded as being too slow to meet the needs of the emergency. Similarly, a number of Governments has taken steps to secure general reductions in hours of work as a means of spreading employment over a greater number of workpeople. At least one Government — that of the United States — has initiated a procedure for raising the wage level, which had fallen out of line with the other economic factors. General measures to shorten the working week have also been taken in the United States and in other countries as a means of dealing with unemployment during the crisis.

In making recent adjustments the Governments have acted as far as possible in consultation with representatives of employers and workers and, where conditions have permitted, have used the machinery of collective bargaining, but they have exerted their authority, to a greater or less extent, to secure modifications of the conditions established by free agreements in order to meet the exigencies of the national economic life. It may here be noted that these adjustments were facilitated in several countries by the existence of an established structure of working conditions regulated by collective agreements.

These processes of general adjustment to meet an emergency may be illustrated from the experience of various countries. The examples show action to reduce money rates of wages during periods of deflation. In other circumstances, general upward

movements of money wages may be found necessary, as is illustrated in a later section of this Report by the industrial recovery measures taken in the United States of America.

In Italy as early as the autumn of 1927, at a time of rapid appreciation of the lira, the directorate of the Fascist party under Signor Mussolini decided in principle that a reduction of wages of not less than 10 per cent. and not more than 20 per cent. was necessary. The reductions were to be made by the trade union organisations in each industry, but a National Trade Union Committee and provincial committees had power to intervene if the organisations failed to agree upon the percentage of wage reductions. The National Committee, which was presided over by the general secretary of the Fascist Party, was attended by the Under-Secretaries to the Ministries of Corporations and National Economy, and by representatives of the Federation of Fascist Trade Unions, the national employers' organisations, and the National Co-operative Institute. In each province trade union committees consisting of the officers of the various trade unions under the chairmanship of the Fascist Federations were formed to co-ordinate policy, where necessary, in their areas. All the proceedings of the trade union committees were subject to approval by the Minister of Corporations, and the whole policy was closely supervised by the Government. A policy of reducing prices was associated with that of wage reductions. By the summer of 1928, the Head of the Italian Government issued a Circular forbidding any further reduction in the wages of any class of workers, considering that in the economic conditions then prevailing new reductions were unnecessary.

At the end of 1934 a plan was adopted in Italy for the introduction of a 40-hour week for workers in industry without change in hourly rates of wages. The various industries were separately to arrange for the application of the plan, and the representatives of the employers' and workers' organisations were to collaborate in making the necessary changes. It may be added that in 1936 the average nominal wage rates fixed by collective agreements were increased by about 10 per cent. in a large number of trades and industries.

In 1931, widespread reductions in money rates of wages were effected in Germany, largely by governmental action, and measures were taken at the same time to secure a reduction of prices and other costs. An Economic Advisory Council, which included representatives of industry and of the trade unions, was set up

to enquire into the economic situation. It reported in favour of wage and also price reductions. This advice was adopted by the Government, and on 8 December 1931, an Emergency Decree was issued involving a modification of collective agreements so as to secure wage reductions in all industries.[1] In accordance with the Decree, wages were to be reduced to the levels ruling on 10 January 1927, or where the rates were more than 10 per cent. above the level on 10 January 1927, a reduction of 10 per cent., or in certain circumstances 15 per cent., was to be made. Rents, rates for water, gas, electricity, the prices of many commodities and rates of interest were all to be reduced. The Conciliation authorities were given wide powers to modify agreements, compulsorily to settle disputes arising out of the wage reductions, and to prolong the validity of wage agreements The Federal Minister of Labour was also given power to declare conciliation decisions binding.

Australia has long had a highly integrated wage structure which includes collective agreements, wage regulation by official machinery in the States, and a Commonwealth system of conciliation and arbitration.[2] For many years the Commonwealth Court of Conciliation and Arbitration took the living wage principle as the basis of its awards, and the basic wages of workers subject to its awards were adjusted according to changes in the cost of living. The Commonwealth basic wages for the lowest-paid categories of workers influence considerably the wages of workers in the higher categories. They also influence the rates fixed in collective agreements and by the various State authorities. In January 1931, as part of a general plan to meet the economic crisis, the Commonwealth Court reduced real wages by 10 per cent., in addition to a reduction in the basic money wage in accordance with the fall in the cost of living. With further reductions during the year the total decline in the money wages of workers under Commonwealth awards amounted to 23 per cent., and substantial reductions were also effected in most of the States. In order, however, that sacrifices would not fall upon wage and salary earners only, measures were taken to reduce interest rates on internal debt by 22½ per cent. In 1933 and 1934 when economic conditions had improved the Commonwealth Arbitration Court cancelled the 10 per cent.

[1] Cf. *International Labour Review*, April 1932 : " Recent Emergency Legislation in Germany " by Dr. F. SITZLER.

[2] See INTERNATIONAL LABOUR OFFICE, Studies and Reports, Series D, No. 17, *Minimum Wage Fixing Machinery* ; also Studies and Reports, Series A, No. 34, *Conciliation and Arbitration in Industrial Disputes*. Cf. also above, p. 109 : Generalised Compulsory Arbitration (Australia).

reduction in real wages, but made certain other changes, including the introduction of a new method of determining the basic wage, the net effect of which was that wages were not increased by the full 10 per cent.

Somewhat similar systems of regulating wages and working conditions are in operation in New Zealand. This country was also similarly affected by the economic depression. As in Australia, the severe fall in prices of products for exports caused difficulty in paying interest on capital borrowed from abroad, and currency depreciation resulted. Finally in May 1931 under special powers granted by Parliament, requiring the Arbitration Court to take into account the economic and financial conditions affecting trade and industry in the Dominion, a general order was issued reducing the rates of remuneration fixed by awards and agreements by 10 per cent. Already, earlier in the year, the salaries and wages of persons employed in the Government service had been reduced by 10 per cent.[1] The Arbitration Court system was also attacked on the ground that its awards, which were binding on the parties for a period of three years, gave an undue rigidity to the wage structure, and that even the 10 per cent. wage reduction in the crisis was made possible only by special legislation. The system was amended by Act of Parliament in 1932 and the long-standing compulsory arbitration of industrial disputes was replaced by voluntary arbitration.[2] When economic conditions improved, the 1931 cuts were partly or wholly restored to Government servants and by local bodies, but no general increase took place in private industry. Indeed, contrary to the tendency in a number of other countries, various collective agreements lapsed and there was a reversion to individual arrangements. This was due to the abolition of the compulsory powers of the Arbitration Court and to the inability of the negotiating parties to reach agreements. As pointed out above, the system of regulating wages and conditions of work by compulsory arbitration has been reintroduced by the Act of 8 June 1936.[3]

[1] A general account of the situation is given in an article on "The Depression and Industrial Arbitration in New Zealand", by E. J. RICHES, *International Labour Review*, Vol XXVIII, No 5, November 1933

[2] Special provision was made for female workers. On receipt of an application from a union representing such workers for an order fixing minimum rates of wages in the industry or industries to which a dispute relates, the Court, after hearing the parties, must make such an order, the period of validity of which shall be from six to twelve months.

[3] Cf above, p. 116.

CHAPTER IV

INCORPORATION OF COLLECTIVE AGREEMENTS IN THE NATIONAL ECONOMIC STRUCTURE

The previous section dealt with temporary interference by Governments with the normal operation of collective agreements and other collective methods of regulating working conditions for the purpose of effecting adjustments to the economic necessities of periods of crisis. Here a review is given of more permanent measures taken in various countries to give collective agreements and analogous methods a recognised responsible rôle in the national economic structure. These developments vary from country to country, some being merely tentative extensions of voluntarily concluded collective agreements while others represent a considerable modification of this system They are all based in varying degree upon the idea of introducing greater co-ordination of working conditions in particular industries or throughout the national economy. Some of them are intimately associated with the planning of the economic and industrial structure

It has been pointed out in recent publications of the International Labour Office, particularly in the *Report of the Director* that the need for " planning " - that is, for the deliberate interference by the Government with the economic structure and the course of economic events in order to achieve certain social objectives is becoming more widely recognised. " The fatalistic faith in the benevolent operation of economic law was everywhere giving way to the demand for systematic collective action. . . The old self-regulating economy was no longer likely to be tolerated unless it guaranteed the maintenance of social well-being. When it failed to do so, it became the business of Government

[1] *Report of the Director to the 1935 Session of the International Labour Conference*, p. 7.

to intervene in the general interest of society."[1] It has also been indicated that the strength of the popular movement in favour of State intervention is based upon loss of faith in the economic system as a consequence of its failure to ensure the distribution and consumption of the present plenitude of actual and potential supplies. Social and economic affairs are seen to be inseparable, and social security is taking precedence over individual profit.

With this changing outlook, social legislation and collective agreements for the regulation of working conditions are seen to be something larger than mere protection against exploitation and the securing of exclusive advantages by a limited group of employers or workers. They became an essential element in an interrelated economic and social structure. The closer integration of economic and social factors within the different countries demands a more systematic regulation of working conditions than in the days of small-scale production, localisation of markets as a result of inadequate means of transportation, and a social philosophy of almost unqualified *laissez-faire*.

The relation between money wages, prices, purchasing power, volume of production, employment and general economic prosperity and social welfare is evident, and the regulation of wages whether by collective agreements or by State machinery is seen to be one of the essential elements in economic stability and social security. Hours of work, which were formerly regulated to ensure a reasonable minimum of leisure time for the worker, are now recognised as an important link between the rate of industrial progress, demand for labour and standards of living.

As has been indicated in Part I of this Report, wages and hours of work represent the chief subjects of collective agreements. Their importance in the organisation of economic life is so great that their regulation cannot be left in a state of chaos. In a number of industrial countries in which an adequate system of collective agreements has not evolved, the Governments have found it necessary to establish systems for their regulation. These systems, the essential features of which are determined by the political, economic and social conditions of the respective countries, differ considerably, some of them incorporating the methods of collective bargaining, while others are based upon alternative but analogous principles.

The simplest form of intervention is illustrated by the British Cotton Manufacturing Industry (Temporary Provisions) Act of 1934. The chief features of this Act have already been described

in Part II of this Report.[1] Its object is to prevent a progressive deterioration of working conditions in an industry which, in present conditions of world trade, has a considerable surplus productive capacity. Cut-throat competition was resulting in lower wages and longer hours without causing any considerable expansion of trade and employment. The workers and employers were strongly organised and had established detailed agreements for the regulation of working conditions, but these were being continually undermined by a minority of firms. Yet the solution of the industry's problems did not lie in wage reductions which left competition almost unchanged. Indeed the process of securing wage reductions led to unrest and stoppages of work which aggravated the situation.

The Act of 1934 was, therefore, passed to prevent a minority of the industry from increasing the difficulties by methods of unfair competition. It provided machinery for extending to all undertakings the wages fixed in collective agreements concluded by organisations representative of a majority of the employers and workers, these wages being given statutory force. Undertakings which have substantial reasons for demanding a modification in their favour of the terms of the agreements are given an opportunity of presenting their case before an impartial body. As the principle of extending the provisions of collective agreements to third parties is new to British legislation, the Act was passed for a short period only, and in its application provision is made for elaborate safeguards restricting the field of State intervention.[2] Also the parties to the agreements, and not the State, are responsible for enforcement. The general regulation of wages in the manufacturing section of the industry will, by restricting the competitive principle in the adjustment of labour conditions, enable attention to be directed to more fundamental remedies for the economic reorganisation of the industry.

By contrast with such tentative measures [3] is the elaborate

[1] Reference has also been made to similar measures taken in other countries for the extension of the provisions of collective agreements to third parties.

[2] Although the principle is new in British legislation, various demands have been made for its application in other industries, particularly those in which Joint Industrial Councils have been established.

[3] Reference may also be made to two particular instances in which collective agreements are associated with measures of an economic character.

In the Netherlands agricultural employers are required to negotiate with agricultural workers' organisations with regard to conditions of employment if they wish to benefit from the emergency legislation for agriculture. In Sweden, under an arrangement between the Government and the sugar manufacturers,

integration of collective agreements in the Italian Corporative System and in systems along somewhat similar lines established or contemplated in Austria and Portugal. Still more complete is the integration of trade unionism and collective agreements in the economic life of the Soviet Union. Along different lines extensive experiments have been made in the United States, under the National Industrial Recovery Act, 1933, to achieve industrial recovery and maintain a co-ordinated economic structure and development by the establishment, industry by industry, of standards of working conditions approved by the Government. Both the National Industrial Recovery Act and the National Labour Relations Act, 1935, give to collective agreements a new importance in the industrial and economic life of the United States. These industrial recovery measures in the United States have not been without effect upon policy in other countries, particularly Canada

In the present section an account is given of these developments in Italy, the Soviet Union, and the United States of America, for the purpose of illustrating recent tendencies for the co-ordination of collective agreements with the whole economic structure. A section on Germany is also included both because of the great extent to which collective agreements were incorporated in the economic structure of the country before the present régime, and because, although the former system of collective bargaining has been terminated, the provisions of the collective agreements concluded several years ago still provide the basis for the regulation of working conditions in many industries.

THE UNITED STATES OF AMERICA

Economic and social conditions during recent years in the United States have shown the need for some method of regulating and co-ordinating labour standards on a nationwide basis with the object of encouraging national industrial recovery and of ensuring greater stability in economic life. Regulation of working conditions by collective agreements between employers' organisations and trade unions had not made much progress, and only in a few

only those sugar-beet cultivators who undertake to pay to the workers in the beet fields the wage rates laid down in the collective agreement (whether they belong to the employers' organisation or not) are entitled to supply the factories with

industries were conditions effectively regulated by such agreements. When President Roosevelt's administration came into power only about 10 or 12 per cent. of industrial workers were employed under collective agreements between trade unions and employers, and most of these agreements were between trade unions and individual firms. The conditions of labour of approximately 80 per cent of American industrial workers were determined by individual agreement, while employee representation plans, restricted to the workers of a single undertaking, were in operation for 7 or 8 per cent. of the workers.

Throughout a very large proportion of American industry, therefore, wages and other conditions of work were determined independently by each undertaking, and wide diversity of conditions resulted. During the depression competition between firms became so intense and the supply of labour so great in relation to demand that money rates of wages were seriously reduced. If a minority of firms in an industry reduced wages considerably, others were compelled, owing to the severity of competition, to follow the same course, and this was often done successively until there seemed almost no limit to the amount of wage and price reduction. There was danger of a disastrous disintegration of the wage and price structure. This aggravated the depression both by reducing purchasing power and by increasing the maladjustment between the wage and price structure and the capital obligations undertaken earlier in the expectation that prices and wages would be maintained at higher levels. In the absence of a developed system of collective agreements the Government deemed it necessary to introduce a method of regulation which would achieve somewhat similar results, while at the same time encouraging the development of collective bargaining.[1]

This was one of the purposes of the system of codes of fair competition established under the National Industrial Recovery Act, and, although Section 3 of this Act, which empowered the President to promulgate such codes, has been declared unconstitutional by the Supreme Court of the United States, the value of some method of avoiding unrestrained competition, especially in labour standards, is so widely recognised that voluntary arrangements have been made in many of the chief industries to ensure

[1] On the questions covered by this section of the Report see *Labor and Relations Boards. The regulation of collective bargaining under the National Industrial Recovery Act.* Lewis L. LORWIN and Arthur WUBNIG The Brookings Institution, Washington, 1935.

the maintenance of regulation. Shortly after the Supreme Court's decision was announced a number of large industries and employers' associations declared that they were in favour of maintaining the rates of wages and hours fixed by the codes. For example a meeting of leaders of the iron and steel industry held at the American Iron and Steel Institute adopted a resolution indicating the industry's determination to preserve standards of labour and fair competition. Maintenance of basic labour standards throughout an industry is now, however, voluntary, and numbers of undertakings in various industries are reported to have reduced wages or increased hours as a result of the freedom given by the Supreme Court's decision.

An outline of the code system is given here because to some extent it replaces collective bargaining, because it has features similar to those of collective bargaining, and because, in association with collective bargaining, it represents an attempt to relate the general regulation of working conditions to the economic reconstruction of the community.[1] The National Industrial Recovery Act included the regulation of working conditions by codes and collective agreements among the chief methods designed " to encourage national industrial recovery " and " to foster fair competition ". Among the remedies proposed for solving the national emergency causing widespread unemployment and disorganisation of industry and undermining the standards of living of the American people were the maintenance of united action of labour and management under adequate governmental sanctions and supervision, the elimination of unfair competitive practices, increase in the consumption of industrial and agricultural products by increasing purchasing power, the reduction of unemployment, and the improvement of standards of labour.[2]

As has been indicated in Part II of this Report, Section 7 *(a)* of the National Industrial Recovery Act endeavoured to encourage collective bargaining by providing that " employees shall have the right to organise and bargain collectively through representatives of their own choosing ", and giving legal protection against victimisation of workers on account of trade union membership and activities.

[1] The text of the National Industrial Recovery Act and the provisions of some of the chief codes of fair competition are given in INTERNATIONAL LABOUR OFFICE, Studies and Reports, Series B, No. 19, *National Recovery Measures in the United States*. The application of the United States Government's recovery policy is reviewed in INTERNATIONAL LABOUR OFFICE, Studies and Reports, Series B, No 20, *Social and Economic Reconstruction in the United States*.

[2] *National Industrial Recovery Act*, Title I, Section 1, Declaration of Policy

The system of codes of fair competition provided the basis of the system of regulation, but the President of the United States was empowered by Section 7 *(b)* of the Act to approve standards as to maximum hours of labour, minimum rates of pay and other conditions of employment freely established by mutual collective agreement between employers and employees in any trade or industry. Such approved standards had the same binding force as those fixed in a code of fair competition, and violations involved liability to fine in the same way as violations of the provisions of a code. The President was also given direct powers to prevent destructive wage or price cutting

The codes themselves fixed standards both for the regulation of productive and commercial practices and for the determination of minimum labour standards In both fields regulation was considered necessary to remedy the situation into which the economic life of the country had been brought by leaving each firm entirely free to act as it desired without considering the effects upon the economic life of the country. It was necessary to view the problem as a whole. Also, the National Industrial Recovery Act required every code of fair competition to include the collective bargaining clause (Section 7 *(a)*) of the Act.

The Act provided that any association truly representative of a trade or industry could prepare a code of fair competition and submit it to the President for approval. Thus an industrial basis similar to that increasingly adopted for collective agreements was established for the code system. The Administration favoured industrial self-government rather than Government regulation of business, and this method was adopted both in the drafting of the codes by trade and industrial associations and in their application by code authorities representative of a branch of trade or industry with the Government assuming consultative and advisory functions rather than direction and control.

Although the codes were intended to achieve some of the purposes of collective agreements, they differed from collective agreements in the relatively restricted share which the representatives of labour played in their formulation and operation. In a few codes the labour provisions were determined largely by direct collective bargaining between trade unions and employers.[1] Among the chief industries in which this method was employed were build-

[1] See *The National Recovery Administration, An Analysis and an Appraisal*, published by The Brookings Institution, Washington, 1935, p. 430.

ing, bituminous coal mining, and several branches of clothing manufacture. In the great majority of industries, however, owing to the opposition of the employers to the trade unions, the method of collective bargaining was not used for determining the labour provisions of the codes. This does not mean that the trade unions had no opportunities of exerting their influence upon these provisions, but, nevertheless, organised labour consistently protested that its participation in the drafting of the labour provisions of codes and also in their administration was inadequate.

The first draft of a code, including its labour provisions, was generally made by a representative association or group of industrialists In preparing the draft the industrialists were influenced by the known wishes of the Government, as indicated in the President's Re-employment Agreement of 20 July 1933 which had been voluntarily adopted as an emergency measure for the period from August to December 1933 by large numbers of industrialists. With certain exceptions this Agreement fixed the minimum age of employment at 16 years of age, the maximum hours of employment in industry and commerce at 35 to 40 hours a week, and minimum rates of pay at 12 to 15 dollars a week or 30 to 40 cents an hour ; wages in excess of the minimum at the time of the Agreement were to be maintained or increased by equitable readjustment. Also, price increases were to be restricted so that profiteering advantage would not be taken of the consuming public.

This emergency policy, therefore, consisted mainly in increasing the number of persons in employment by reducing hours of work, and in expanding the purchasing power of the community, thus contributing to industrial recovery and to still more employment It was recognised that, except for a short period of emergency, the provisions of the President's Re-employment Agreement were too standardised to meet the varying needs of the different industries, and they were to be replaced by separate codes adjusted to these needs. Nevertheless, the Government was determined that, along general lines, the policy of the Re-employment Agreement should be maintained, and it indicated that draft codes which departed too much from this policy would not be approved. An association of industrialists which proposed a code showing wide variation from the Government's policy was immediately subjected to pressure by the responsible officers of the National Recovery Administration to make substantial adjustments.

Drafts proposed by associations of industrialists were considered

at preliminary conferences and at public hearings. At the preliminary conferences a representative attended from the LabourAdvisory Board, which was part of the structure of the National Recovery Administration appointed by the Secretary of Labour and consisting mainly of trade union officials.[1] Organised labour also had opportunities of influencing the provisions of codes during the course of the public hearings. These methods have been described as a form of " indirect representative bargaining " in which proposals on labour conditions formulated by organised employer groups were submitted to the Government's administrative agency, which possessed the power of final decision, and representatives of Labour, by bringing pressure on the agency, endeavour to influence its decision.[2] However, the trade union leaders complained that the system gave the industrialists an unfair advantage because the drafts on which the discussions were based were prepared by the trade associations, because those associations were in an unduly influential position in the processes of making adjustments to meet objections raised during the public hearings, and because the officers of the National Recovery Administration before whom hearings were held and who mainly determined what attention should be given to criticisms of draft codes were largely drawn from the ranks of industrialists.

As already indicated, the administration of codes was in the hands of code authorities, the members of which were largely drawn from trade associations or were in other ways representative of the industrialists. Only about 5 per cent. of the codes provided for labour representation on the code authority. Code authorities composed mainly of industrialists might be fairly suitable for securing compliance with the trade practice provisions of codes, but complaints of violation of labour provisions and the settling of labour disputes required an impartial authority or a body upon which labour was represented equally with industrialists. An attempt was made to meet these needs by the establishment of a compliance organisation within the framework of the National Recovery Administration to deal with violation of the labour provisions as well as with the trade practice provisions of codes. In some industries, usually those in which labour was well organised,

[1] In the interests of industrialists and of consumers respectively, representatives of the Industrial Advisory Board and of the Consumers' Advisory Board also attended these conferences.

[2] See *The National Recovery Administration : An Analysis and Appraisal*, *op. cit.*, pp. 427-30.

industrial relations committees or boards equally representative of employers and employees with an impartial chairman, were set up to deal with labour complaints and disputes. National machinery was also established for dealing impartially with labour disputes by the method of voluntary arbitration, on the request of the parties to a dispute, to regulate the operation of the collective bargaining clause of the National Industrial Recovery Act, and to investigate complaints of discrimination against workers because of their trade union activities

An attempt was also made to overcome, to some extent, the objection of the trade unions that labour was rarely represented on code authorities, by the appointment of a labour adviser to the Administration member of each code authority. These advisers, appointed on the nomination of the Labour Advisory Board, were not members of the code authorities ; they attended meetings only on invitation, but had access to the minutes and could appear before the code authorities to make statements on specific subjects.

The Government's hope that the codes of fair competition fixing minimum conditions of work might be supplemented by higher standards and the detailed regulation of wages and other conditions for skilled workpeople by collective agreements between employers and trade unions was not realised. Though the right to collective bargaining was established by Section 7 *(a)* of the National Industrial Recovery Act, the employers insisted that the right to bargain individually was also implicitly preserved, and that collective bargaining did not necessarily mean bargaining with trade unions but that it included negotiations between the management of a firm and representatives of the workpeople employed by that firm. They therefore proceeded to establish employee representation plans, criticised by organised labour as " company unions " and as affording little protection of the workers' interests, while many firms maintained individual bargaining, claiming that their workpeople freely preferred this method.

The membership of trade unions, however, grew rapidly and bitter disputes occurred throughout the country on the question whether these unions or the company unions really represented a substantial part of the workers in particular undertakings. Conflicts also arose about the rights of minorities of workers to separate representation in collective bargaining in undertakings in which ballots showed that a majority of the workers preferred representation by trade unions. In many industries these issues remained unsettled and conditions of work above the minima

fixed by the codes generally continued to be regulated by individual agreements or on a company basis. The elasticity of the provisions of many codes permitted extensive evasion of the Administration's intentions that earnings should be maintained with the shorter working week and that existing differentials between skilled and unskilled workers should be continued.

An attempt to meet the collective bargaining difficulty at least in part is made by the provisions of the recently adopted Wagner-Connolly National Labour Relations Act. This Act, which gives statutory force to the right of employees to self-organisation and to bargain collectively through representatives of their own choosing, is applicable only when violation of this right would burden or obstruct interstate commerce. It sets up a National Labour Relations Board to protect the employees against interference or discrimination by employers on account of their membership of a labour organisation and to prevent employers from exercising discrimination in conditions of employment for the purpose of encouraging or discouraging membership by an employee in any labour organisation, except that an employer by agreement with a representative labour organisation may require his employees to become members of such an organisation. The Act also requires that the representatives designated or selected for the purposes of collective bargaining by the majority of the employees of an undertaking or other appropriate unit shall be the exclusive representatives of all the employees of such unit for the purposes of collective bargaining. In cases of dispute, the Board is empowered to decide who shall be the representatives of the employees, taking a secret ballot of the employees, if necessary, for the designation or selection of the representatives. The Act thus attempts to remove some of the uncertainties which arose on the application of the collective bargaining clause of the National Industrial Recovery Act, and to make more difficult the evasion of collective bargaining. In particular it aims to prevent employers from encouraging their employees to become members of " company unions ".

It is too early to reach conclusions upon the practical effects of this measure. The Government of the United States evidently regards as unsatisfactory the independent regulation of working conditions by individual undertakings without any co-ordination, and it favours the establishment of a system of collective bargaining. The terms of the President's Re-employment Agreement and the codes of fair competition provided a foundation for such

a system, and the collective bargaining provisions of the National Industrial Recovery Act and the Wagner-Connolly National Labour Relations Act are designed to facilitate the building of a superstructure on collective lines by joint negotiation between the employers and labour organisations.

GERMANY

An account of collective agreements and the collective regulation of working conditions in Germany is included here both because there was a tendency, before the advent of the National Socialist system, for the State to intervene in the regulation of working conditions in order to ensure their adjustment to the exigencies of the economic situation, and because National Socialism has introduced full control of working conditions by the State but has in practice utilised extensively the standards determined by collective agreements concluded before the establishment of the new *régime*.

Until 1933, working conditions were widely determined by collective agreements concluded by organisations of employers and of workers. Under the Federal Constitution of 11 August 1919 freedom of association for the purpose of protecting and improving conditions of employment and economic conditions was guaranteed to every person and in every occupation. Freely formed organisations of employers and of workers played a prominent part in the preparation and application of labour legislation, while an extensive and detailed system of collective agreements regulated the working conditions of workers in the chief industries throughout Germany. Individual conditions of work were not to be less favourable to the worker than those determined by the provisions of collective agreements. Within the undertakings works councils were set up under the Act of 4 February 1920 to protect the common interests of wage-earning and salaried employees in relation to their employers, and to support employers in furthering the purposes of their undertakings.

Although German labour laws attempted to secure the regulation of conditions of employment as far as possible by negotiation and agreement between employers and workers themselves, official conciliation and arbitration played an important part in the conclusion of collective agreements. A procedure was introduced by which, in exceptional circumstances, binding awards could

be declared by the competent Federal authorities. This system of conciliation and arbitration was established by an Order of the Federal Government issued on 30 October 1923, supplemented by an Administrative Order of 29 December 1923.[1] Provision was made for the official appointment of conciliators and conciliation committees, the former dealing with disputes affecting large industrial areas or which were of particular importance for the economic system, and the latter with less serious and more localised disputes. Conciliators were Federal Officers appointed by the Federal Minister of Labour, either permanently for large economic areas or temporarily for particular disputes. Conciliation committees appointed for smaller districts usually consisted of independent chairmen, appointed by the supreme authority of each State, together with assessors representative in equal numbers of employers and of workpeople. In order to avoid unnecessary divergencies between the practices of the various conciliators on conciliation committees, the Federal Minister of Labour was empowered to issue general guiding principles to be taken into consideration by the conciliation authorities.

Official proceedings with a view to the settlement of a dispute could be initiated on application by one of the parties involved, this being regarded as the normal method, or by the conciliation committee or conciliator in exceptional cases when such intervention was considered necessary in the public interest The conciliation authorities were required to make every effort to secure agreement between the parties by the processes of conciliation and, if successful, to embody the terms in a collective agreement. In the event of an agreement not being reached by conciliation, further proceedings could be instituted and an award given. An award not accepted by the parties could, nevertheless, be declared binding by the competent authorities if its provisions appeared just and reasonable, taking into account the interests of both parties, and if its application was desirable on economic and social grounds. A permanent conciliator was competent to declare binding the awards of conciliation committees within his area or extending only slightly beyond it ; other awards of conciliation committees and those of conciliators could be made binding only by the Federal Minister of Labour. In practice, the official machinery of conciliation was extensively applied, many agreements being concluded with the assistance of the

[1] These Orders were issued under the Emergency Powers Act of 13 October 19!

conciliators and conciliation committees, and the method of compulsory award was used in the settlement of a considerable number of disputes.

From 1930 onwards, the industrial depression and its social effects in Germany resulted in increased intervention in industrial relations by the public authorities. The Government indicated that, in particularly serious disputes, it would, if necessary in the interests of the community, assume wider powers of intervention than those under the system introduced in 1923. Reference has already been made in a previous section of this Report to the measures taken at the end of the year 1931 by the Federal Government to secure general reductions of money wages in the interests of industry, the national finances and the preservation of civil peace. New and wide responsibilities were given to the conciliation and arbitration authorities to facilitate the wage changes demanded by the Government. Parties to agreements were required to fix the new wage or salary rates by means of annexes to their existing agreements, but if they failed to reach agreement upon the new rates the competent conciliator was empowered, in the last resort, to fix the wage or salary scales, and to prolong the validity of agreements.[1]

Fundamental changes were made when the National-Socialist Government came into power. The principle of collaboration was to be established, and methods of bargaining based upon divergent interests and leading sometimes to industrial conflicts were to be suppressed. At the beginning of May 1933 measures were taken for the dissolution of the trade unions and the inauguration of the German Labour Front, which absorbed the trade union organisations.

The German Labour Front is defined as " the organisation of all persons engaged in labour, whether manual or mental, without distinction of economic or social position. In it the

[1] Measures affecting collective agreements were also taken by the Government during 1932 with a view to bringing about a revival of industrial activity and a reduction in the number of unemployed persons. By a Decree issued in September 1932 employers who increased their staffs were authorised to reduce individual wages in accordance with a sliding scale based on the increase in employment afforded. The Decree also empowered the official conciliators to authorise payment of lower wages than those fixed in collective agreements in cases where the precarious position of the undertaking rendered the current rates too heavy for the continued working of the establishment, but with the proviso that such reductions should not exceed 20 per cent. The arrangement for reducing individual wages where increased numbers were employed encountered difficulties and was later abandoned without having exercised any very important influence upon the wage situation.

worker and the employer are ranged side by side, instead of being separated by organisations for the defence of particular economic or social classes or interests. . . The Labour Front is not, however, the place where the material questions of the daily life of labour are decided. . . The true object of the Labour Front is to create a working community of all Germans and to educate them in the spirit of the National-Socialist State ".[1] All occupied persons, including members of the former trade unions of workers and salaried employees and members of employers' associations, may be members of the Labour Front on a footing of complete equality.[2]

Such a relationship between employers and workers was thought to make employers' organisations unnecessary, and these dissolved themselves.[3] The system of conciliation introduced in 1923 was also terminated. The Labour Front is under the control of the National-Socialist Party.

With the abolition of the trade unions a new method of regulation of working conditions became necessary, and an Act of 19 May 1933 provided for the appointment of " labour trustees " with power to terminate, revise or prolong collective agreements, and to undertake the maintenance of industrial peace.

Labour Trustees are Federal officials appointed for large industrial areas and act under general instructions of the Federal Government. Pending the inauguration of a new system, the power to regulate working conditions was transferred from the organisations of employers and of workers to the labour trustees. Under their authority, however, many of the essential provisions of the old collective agreements remained in operation during a transitional period until the new forms of regulation could be evolved and begin to operate effectively.

The National-Socialist conception of industrial relations and methods of regulating working conditions was embodied in the National Labour Regulation Act of 20 January 1934 which provides

[1] *Aufruf an alle schaffenden Deutschen*, issued on 27 November 1933 by Dr. Ley, Leader of the German Labour Front, Mr. Seldte, Federal Minister of Labour, Dr. Schmidt, Federal Minister of Economic Affairs, and Mr. Keppler, Commissioner for Economic Problems.

[2] The organisation, which is directed by the Leader of the Labour Front, includes a National Chamber of Labour and eighteen regional Chambers, and these have industrial Sections. The individual undertaking forms the basis of the organisation.

[3] The property of the former associations of employers and workers and their affiliated organisations and undertakings controlled by them was transferred to the Labour Front to be used as a basis for financing welfare services.

that, in place of the relations of employer and worker, there shall be established in each undertaking the conception of the " works community " with the owner of the undertaking as " leader " and the salaried and wage-earning employees as his followers. These shall work together for the furtherance of the purposes of the establishment and for the benefit of the nation and the State in general. The leader of the establishment makes decisions for his followers in all matters affecting the establishment in so far as they are governed by the Act. He must promote the welfare of his followers, who are required to be loyal to him as fellow members of the works community.[1] The interests of the undertaking are subordinate to those of the State. In undertakings which employ at least twenty persons a number of " confidential men " must be appointed from among the followers to advise the leader. Under his presidency they become the " confidential council " of the undertaking.[2] These councils give advice on measures directed to increase the efficiency of the undertaking, and on conditions of employment, and must endeavour to settle all disputes within the works community.

Under the present system, it is intended that the normal basis for the regulation of working conditions, including wages, shall be the individual undertaking, this being in contrast with the former method of collective agreements extending to a number of undertakings. In each undertaking labour conditions are regulated by the leader who, in all undertakings employing twenty or more wage-earning and salaried employees, must issue " establish-

[1] The National Labour Regulation Act instituted a system of Social Honour Courts to deal with gross breaches of the social duties in the works communities A court is established in each of the regions for which a labour trustee is appointed, and a Federal Honour Court has also been set up to hear appeals from the regional courts. The courts deal with cases referred to them by the labour trustees, where the leader of an establishment or any other person in a position of supervision abuses his authority in the establishment by maliciously exploiting the labour of his followers or wounding their sense of honour, or where a follower endangers industrial peace in the establishment by maliciously provoking others. The penalties include a warning, reprimand, fine or removal from the post occupied.

[2] These councils differ in various respects from the works councils which were set up in many establishments under the Works Councils Act, 1920. Whereas the works councils consisted of representatives of the workers to protect their interests and to support the employer in furthering the purposes of the undertaking, the confidential councils include the head of the undertaking. Their chief duty is to strengthen mutual confidence within the works community. Members of works councils were elected by secret ballot by the workpeople ; while, for the new confidential councils, lists of candidates are drawn up by the head of the undertaking in agreement with the chairman of the National-Socialist cell organisation in the undertaking, and the workpeople decide by secret ballot for or against the list. In the event of disagreement, the members of the council are appointed by the labour trustee

ment rules " in writing.[1] His decisions are taken after hearing the advice of the confidential council ; the followers, therefore, have opportunities for making known their opinions, but the terms of employment do not take the form of an agreement between them and the leader.

Without safeguards, such a system might lead to frequent disputes, and, as industrial conflicts are now prohibited in Germany, the State must be prepared to intervene in the regulation of wages and other conditions of employment with the object of preserving industrial peace, apart from the necessity for intervention in the general economic interests of the country. Provision is, therefore, made by the Act of 20 January 1934 for confidential councils to appeal against their establishment rules to the labour trustee, who may cancel the rules and issue others to replace them.

The labour trustee may also, after consulting an advisory council of experts,[2] lay down guiding principles on conditions of employment, thus exerting influence, without compulsion, over the social policy of the undertakings in his area. The provision for consulting the council of experts, which includes members of the confidential councils of undertakings in the area, ensures that the views of leaders and followers shall be taken into consideration during the preparation of guiding principles.

Labour trustees have still wider powers of regulation. If the laying down of minimum conditions of employment is urgently needed for the protection of the persons employed in a group of undertakings within their areas, they may issue collective rules. These collective rules automatically replace any establishment rules which fix lower standards. This method thus makes possible the collective regulation of working conditions in circumstances of urgent necessity, but such collective rules differ from the former collective agreements in being legally binding acts of the State

[1] Where the rules fix the remuneration of workers and employees, the rates must be minima so as to allow scope for the remuneration of individual members of the undertaking according to their efficiency. This permits considerable variation of wage conditions within the individual undertaking

[2] The labour trustees appoint these advisory councils from the various branches of industry in their areas. Three-fourths of these experts must be chosen from lists of candidates nominated by the German Labour Front, which must put forward in the first instance a considerable number of suitable members of the confidential councils of the undertakings of the area, with due regard to the various occupational groups and branches of industry. The lists must include leaders of undertakings and other members of the confidential councils in approximately equal numbers. The trustees may appoint one-fourth of the experts from among other suitable persons in his district. In addition to the councils of experts, which are permanent bodies to advise on general questions, temporary committees of experts may be appointed to advise on narrower problems.

and not standards based upon negotiations between organisations of employers and of workpeople.

In practice, the desire to avoid difficulties likely to result from widespread changes in the conditions established by the former collective agreements has led to the continued operation of these conditions over a large part of German industry, whether as a result of decisions of the leaders of individual undertakings or of the influence and control exercised by the labour trustees. During 1933, the Government indicated its policy in the statement that the abolition of collective agreements must in no case give rise to any arbitrary determination of conditions of employment, and that it regarded as an important matter the maintenance of the stability of wage levels. The maintenance of existing wage rates was emphasised as one of the most important duties of the labour trustees, changes being allowable only in exceptional cases and if the existing rates were no longer either socially or economically justifiable. This policy of avoiding or restricting changes in wages and other conditions of employment inevitably involved continuing in force substantially over a large part of German industry the standards established by the old collective agreements. Subsequently, when the National Labour Regulation Act came into force on 30 April 1934, the Minister of Labour ordered that collective agreements in existence on that date should be promulgated without alteration as collective regulations in order to secure continuity in the regulation of working conditions. The time for which the validity of these provisions was prolonged was not stated, but it was intended that they should remain in force only for a transitional period during which the labour trustees would undertake the modification of these regulations according to circumstances.

An important change was made early in 1935 when the scope of the Labour Front was enlarged to include the system of economic organisation established by an Act of 27 February 1934 and an Order of 27 November 1934. This extension of scope was effected by an agreement of 26 March 1935. The agreement provides that collaboration between these hitherto independent systems must take place at every stage of the organisation of production and labour. The Council of the National Economic Chamber, in which are represented the heads of the national economic groups and the district economic chambers, was combined with the Labour Council, composed of heads of undertakings and provincial administrators of the Labour Front, to form the National Economic and Labour

Council, the main task of which is to discuss economic and social questions. Similarly in the districts, the councils of the economic chambers were combined with those of the district organisations of the Labour Front. The general object of the organisation is to recommend solutions and establish the conditions necessary for the formation of a true community of production and labour, and it thus provides a means for the co-ordination of economic and social policies.

ITALY

In Italy, the system of collective agreements for the regulation of working conditions is highly developed and forms an integral part of a co-ordinated national economic structure. Indeed, the provisions of agreements, with the supporting authority of the State, have become more and more assimilated to rules of law. Also, as they are binding upon persons who are not members of the organisations participating in their negotiation, they should be regarded strictly as collective rules or arrangements rather than collective agreements.

In order to appreciate the position of collective agreements in the Fascist corporative system it is necessary to review some of the underlying principles of State policy in Italy. The corporative system is based upon the principle of collaboration of all the producing groups in the national economy and the superiority of the interests of the whole over sectional interests. The State is regarded as an organism having aims, life, and means of action superior in power and duration to those of the separate individuals or groups within it. Unlike State Socialism, the corporative system regards private industry and initiative in the field of production as the most efficient and useful instrument for the national welfare, and it attempts to promote co-operation and solidarity between the various classes. On the other hand, capitalism is believed to be facing a crisis and the purpose of the corporative system is to bring into the economic world that element of discipline which has hitherto been lacking. The Fascist economic system is a reaction against liberalism, under which the organisation of production was considered to be purely a question of private interest. This is abolished, the methods of *laissez faire* being thought to involve a deplorable waste both of energy and of material resources.

The system permits a form of planned economy to be established, and the activities of individuals and groups, which hitherto had been left entirely free or subject only to haphazard intervention, are controlled and directed by rules and regulations established centrally in the national interest. Intervention, however, takes place only when private industry is inadequate or when the political interests of the State are at stake. It may take the form of supervision, encouragement, or direct management; but, if suggestion, persuasion and propaganda should not be enough, the Fascist régime would not hesitate to exercise restrictive and coercive action, even on economic forces.

An elaborate mechanism of collaboration and control has been established. This includes trade associations, federations and confederations representing the group interests respectively of employers and workers in particular branches of production. These bodies, which negotiate collective agreements, are under the supervision, co-ordination and control of corporations representing wider interests. Higher still in the hierarchy is the National Council of Corporations, while the whole system is subject to the authority and veto of the Minister of Corporations and the Head of the Government. The essential features of this system are outlined below.

At the basis of the system are provincial or local associations of employers and of workers respectively in a given branch of economic activity. These occupational associations are grouped into inter-provincial associations and into national trade federations, and national federations are combined into confederations. These various bodies include employers only or workers only, except that persons engaged in the arts and liberal professions cannot be separated in this way. Legal recognition is accorded to confederations and to national trade federations, which thereby become institutions under public law.[1] Recognition is accorded only to one employers' federation and one workers' federation in any defined industry or other category of economic activity.

These federations represent the whole of the employers and of the workers respectively in the category, and may conclude collective agreements upon working conditions or upon the regulation of economic relations. Agreements are binding upon all persons, whether members of federated associations or not. Local

[1] Exceptionally, the inter-provincial and provincial associations of professional workers and artists are legally recognised, as well as the corresponding national associations and the Confederation, and they may conclude collective agreements.

associations within a federation may only conclude agreements if this power has been delegated to them by the federation. The federations and their associations undertake the organisation of public employment exchanges, the operation of sickness insurance and public relief systems and the education and training, particularly the vocational training, of the persons they represent, and they support the activities of the national workers' spare time institutes. They are also required to promote the technical and economic development, in the general interests of the nation, of the branch of economic activity which they represent. The associations, federations and confederations direct their actions to the defence of the occupational interests of their members, but these must be brought into harmony with the national interests.

The attempt has been made to form a complete and comprehensive structure covering all branches of economic activity, including persons working on their own account in handicraft trades. In the establishment of this structure, in accordance with the Act of 3 April 1926, the creation of organisations was necessary among employers in most branches except large scale industry, and among the workers especially in agriculture. Freedom of association is not prohibited, and no person is required to become a member either of a recognised association or of any other association, but legally recognised bodies have the exclusive right of legal representation. As collective agreements apply to persons who are not members of associations, a unity of employment contracts in each industry and district is ensured, and the terms of individual contracts must correspond with those of the collective agreements except where the terms of the individual contract are more favourable to the worker.

As already indicated, the federations are grouped into Confederations, the number of which is nine. Each of the four great branches of economic activity (industry and transport, agriculture, commerce, and credit and insurance) has one Confederation representing the employers and one representing the workers. The ninth Confederation represents professional workers and artists. The number of federations in a Confederation varies widely, the greatest numbers being forty-five in the employers' Confederation of Industry and twenty in the Confederation of Industrial Workers, while the smallest numbers are in the agricultural Confederations, the workers and the employers each having four federations in their respective Confederations. The Confederations, in collaboration with the National Fascist Party and in accordance

with powers delegated by the Minister of Corporations, exercise political supervision and control over their constituent federations and associations. Collective agreements concluded by federations are subject to approval by the Confederations. Confederations may also conclude collective agreements.

The principal negotiations of collective agreements of national application, whether by federations or Confederations, are usually presided over by the Under-Secretary of State in the Ministry of Corporations. National agreements often take the form of principles or standard rules of employment to be applied locally by associations to which power has been delegated to conclude local agreements. The structure of trade associations and collective agreements was used to effect the general reduction of wages at the time of the stabilisation of the lira in 1927, to which reference is made above in the section dealing with State intervention in periods of economic crisis. It is claimed that the success achieved was due in large measure to unity of political action and disciplined trade organisation.

Reference has also been made to general reductions in hours of work in Italy in 1934. The method by which these reductions were effected illustrates the working of the Italian collective system. For industry, a general agreement was signed on 11 October 1934, to be valid until 16 April 1935, between the Confederation of Industry (employers) and the Confederation of Industrial Workers, with a view to distributing the available opportunities for employment among a larger number of workers. This agreement was brought into operation within a few weeks by means of over fifty separate collective agreements in as many branches of industry. It established the principle of the forty-hour week, without upward adjustment of wages but with payment of allowances to workers on the shorter working week who are fathers of large families. Other general agreements on reductions of hours were concluded by the Confederations in commerce, agriculture, and credit and insurance. In the light of experience of the reduction of hours, the Fascist General Council decided on 16 February 1935 that the change should be made permanent. It was also this method of general agreements which was resorted to in 1936 when nominal wages were increased by 10 per cent.

Whereas the associations, federations and Confederations (except that of artists and professional workers) represent employers only or workers only and have as primary purpose the safeguarding of the interests of the occupational groups which they represent,

the corporative system includes organisations for unifying the forces of production. These "central co-ordinating bodies" are known as corporations. Their establishment was envisaged in the Act of 3 April 1926 on the regulation of collective relations in connection with employment, but they were not set up until 1934 when a special Act on the organisation of corporations was passed (5 February 1934). The corporations go beyond the special interests of occupational groups and attempt to transform occupational aims into public ends. As recognised organs of the State they may issue binding rules for regulating relations between employers and workers, and may promote and encourage measures for co-ordinating and improving the organisation of production. They may lay down general rules for conditions of employment in the undertakings which they cover, subject to previous agreement with the representatives of the employers and the workers. Corporations can intervene whenever a monopoly or other privileged position makes intervention necessary to protect consumers or in the wider interests of the national economy. They also have extensive advisory functions which they exercise on requests by competent public administrative departments. Among their other activities is the conciliation of disputes.[1]

Corporations, which are national in scope, have been set up by Decree for each of the main branches of production, including services, the total number of corporations being twenty-two. Each corporation has a council, the number of members of which varies according to the branch of production, the smallest council consisting of fifteen members and the largest of more than sixty. Members are appointed by Ministerial Decree. Employers and workers are represented in equal numbers, these members being nominated by the trade organisations grouped in the corporation. Other members are nominated by the National Co-operative Institute, while three representatives of the National Fascist Party are nominated as members of each of the twenty-two corporations. Representatives of Ministries interested, and experts in the branches of production covered by any particular corporation attend its meetings.

During 1935 a number of corporations began their work. Most of them concentrated their attention mainly upon economic problems, including expansion of production, improvement and

[1] Their scope also includes the regulation of apprenticeship, vocational training, and organisation of employment agencies.

grading of products, extension of markets at home and abroad and co-ordination of the different branches (primary production, manufacturing and commerce) covered by any corporation. Other subjects discussed included training and apprenticeship, employment exchange services, and methods of social assistance.

Although the various corporations do not represent the separate occupational interests of employers or of workers, they are nevertheless sectional in the sense that each corporation represents a particular branch of production and trade or service. To ensure the fullest co-ordination, harmony and efficiency of the national economy the corporations work under the guidance and control of the National Council of Corporations and of the Ministry of Corporations. The National Council, which was set up under an Act of 20 March 1930, includes representatives of various Ministries and of political interests, as well as of the National Confederations (in equal numbers of employers and workers) and of certain social welfare organisations. The National Council occupies a central position among the organs of the Fascist State. General questions are discussed in the General Assembly of the National Council, but the Central Corporative Committee of the National Council, which has been granted full powers, usually acts on its behalf.

The functions of the National Council are partly advisory and partly the making of rules for the regulation of economic, labour, and social conditions. The Council may draft rules for the co-ordination of measures covering employment relations laid down by collective agreements, for the regulation of collective economic relations, and for the co-ordination of all other regulative activities of corporations. In practice the National Council has only rarely made changes in the provisions of collective agreements.

The whole of the collective structure for the regulation of economic and labour relations is under the general direction of the Ministry of Corporations, which is the supreme body of the corporative system. It issues decrees defining the powers and functions of the corporations, and during the period before the corporations were established the Ministry directly undertook the work of conciliation of industrial disputes. A number of agreements of national scope were concluded under the auspices of the Ministry as a result of its intervention in large-scale collective disputes.

The general control which the corporative system exercises over collective agreements is supplemented by the method of

settling of industrial disputes. Strikes and lock-outs are prohibited, it being claimed that in the Italian system State justice takes the place of the class struggle. Disputes connected with the regulation of collective labour relations, whether concerned with the application of collective agreements or other regulations in existence or with demands for new conditions of employment, are brought by legally recognised trade organisations before the competent labour court. Disputes are, however, referred to the courts only as a last resort when direct methods of conciliation have failed to achieve agreement. If necessary in the public interest, disputes may be brought before the courts by the public prosecutor. An attempt at conciliation must be made before a decision is issued. In issuing decisions upon new conditions of employment the courts, while taking into account the interests of the employers and those of the workers, must have regard to the superior interests of production. In practice, the great majority of new agreements are concluded by direct negotiation or by processes of conciliation, while for only a very small number has resort to the method of arbitration been necessary.

UNION OF SOVIET SOCIALIST REPUBLICS [1]

The history of collective agreements in pre-revolutionary Russia is closely bound up with that of the legally recognised trade unions. In consequence, collective agreements were extremely rare before the Revolution. Among the more outstanding agreements, attention may be called to those concluded in 1905 at Kharlov and Moscow, the first between a locomotive works and the workers it employed, the second between the electricians' union and the owners of technical offices. The collective agreement concluded at Moscow in 1906 between the workers and owners of water-supply and sanitary engineering undertakings is also worthy of mention.

The period of reaction which followed (1907-1912) was marked by a complete standstill in trade union activity and a total absence of collective agreements.

It was only after the Revolution of February 1917, when the formation of trade unions was legally authorised, that the tendency to conclude collective agreements began to become general. Then

[1] This part of the Report was prepared by Mr. Jan Abel, Chief of the Wages Section of the Central Council of Trade Unions of the U.S.S.R.

it was that one of the largest trade unions — the metal workers' — concluded twenty-one local collective agreements bearing on wage rates and covering 600,000 workers. These agreements included three for the Leningrad (then Petrograd) district, eight for the Moscow district (including the Sormovo subdistrict), six for the Donetz Basin and four for the Volga district. These early collective agreements were called "wage agreements", for their main object was to establish a definite minimum wage for the various classes of workers according to their trade and qualifications.

These agreements, concluded by local trade union sections, fixed wage rates which, in certain cases, differed for workers belonging to the same branch of industry and the same district. For this reason, the trade unions endeavoured from 1917 onwards to centralise the wage-fixing machinery and to abolish where possible differences in wages for workers of the same district. To this end, the metal workers' union referred to above organised in 1917 a series of regional conferences to discuss wage rates. Conferences of this sort were held, for example, in the industrial districts of the Donetz and Krivorog, for the industrial area of central Russia, and in Perm (for the Motovilikhin works) and in the village of Kamensk (for the Briansk Makeevsk and Kadieff works and for the Dumot and Hartmann factories).

The standardisation of rates by district was fully achieved during the years 1918-1921. This period was marked by the complete disorganisation of the economic structure of the country, this being a direct result of the world war, the Russian Civil War and foreign intervention. The shortage of raw materials and foodstuffs made it necessary to centralise the distribution of such commodities and to pay the greater part of wages in kind.

Methods of centralisation were likewise applied to cash wages, the necessary measures being carried out by the trade unions, which issued compulsory rules concerning wage rates. These rules, which extended to the whole territory of the Soviet Union, covered the general body of wage-earning and salaried employees in each industry, from ordinary labourers to engineers and technical managers. Once this method was established, collective agreements had no further reason to exist.

The return to the system of collective agreements dates from the introduction of the "new economic policy" (1922). State undertakings were then called upon to take steps to avoid running at a loss ; each undertaking had to be organised on a profit-making basis and wages had to be established in relation to profit and output.

It thus became impossible to apply uniform rates of wages, and separate rules had to be made for each industry and each undertaking, on the basis of working results and possibilities of future expansion.

The fundamental conquests of the Revolution in the field of labour protection were already enshrined in the Labour Code of 1922 (8-hour day for all workers ; 6-hour day for persons employed on unhealthy work, and for young persons under 18 years of age ; annual holiday of from 2 to 4 weeks for salaried employees ; measures for the protection of the work of women and children surpassing those adopted in any other country ; increased rights for trade unions ; introduction of social insurance, etc.). As the existence of this legislation guaranteed minimum working conditions, there was no further drawback to allowing actual working conditions to be fixed on the basis of local rules, quite apart from any idea of centralisation. Rules relating to wages and conditions of labour were no longer necessary except for trusts and large economic groups and they then took the form of general collective agreements covering the whole body of workers in the undertakings included in the trust or the economic group concerned (1922-1923).

It soon became necessary, however, to fix by collective agreements not only the general conditions of labour and wages for each trust or economic group as a whole but also for each undertaking. The regional trade union committees were thus authorised to conclude, apart from the general collective agreements entered into by the central trade union committees with the management of the trust or economic groups, supplementary agreements with the managements of individual undertakings. It should be noted, moreover, that the General Council of Trade Unions concluded collective agreements only with trusts, economic groups or institutions of importance throughout the whole territory of the Soviet Union ; in the case of regional trusts and institutions, the collective agreements were concluded by the regional trade union committees, and for district or local trusts and institutions by the district committees.

Subsequently, the decentralisation of collective agreements was carried still further, and at the present time such agreements are concluded by the manager of each undertaking with the local works council of the trade union, after the clauses of the agreement have been discussed by the workers of the undertaking.

It is to be observed that in general the part played by trade

unions in the Soviet Union, especially with regard to the conclusion of collective agreements, is absolutely different from what it is in capitalist countries, and that the actual character of the collective agreements is also quite other. The duties of the trade unions on the morrow of the October Revolution were defined at the first Trade Union Congress of the Union of Soviet Socialist Republics (Petrograd, 7–14 June 1918).

The first Trade Union Congress declared that the trade unions were not to be considered as simple weapons of combat to be used to obtain an improvement in the conditions of the working classes under a capitalist regime, but that it was their duty " to fight side by side with the other organisations of the working classes to establish the dictatorship of the proletariat and to hasten the advent of socialism ".

Under the rule of the Soviets, which is a dictatorship of the proletariat, the trade unions have become the training ground of communism ; they enable the proletarian masses to take a share in the management of industrial affairs and group them in organisations which co-operate closely in the work of all Government departments and which exercise their influence in all fields of public activity, ever ready to protect the momentary and lasting interests of the proletariat and to oppose any lapses into bureaucratic methods.

The special situation of the trade unions in the proletariat State naturally influences the part they take in the conclusion of collective agreements. In capitalist undertakings, the conclusion of collective agreements leads to a clash between the conflicting interests of two opposed classes, but the State industry of Soviet Russia knows no class rivalry, for the means of production are the property of the working classes. In the undertakings of the Soviet Union, collective agreements are agreements as to the reciprocal obligations of the workers and the management of the undertaking, in which the two contracting parties are united by common interests and aims. The trade unions which take part in the conclusion of collective agreements on behalf and as the representatives of the working classes do not by their action oppose the State — as they would do under a capitalist regime — but endeavour by all means in their power to strengthen the Soviet State and its industry. In the case of private undertakings or establishments working under a concession, the position of the trade union is quite other, being the same as that of trade unions in capitalist countries ; that is to say, their aim is to protect

by means of collective agreements the various economic interests of the proletariat.

Before the periodical renewal of the collective agreements, it is customary for the Central Council of Trade Unions, acting in conjunction with the People's Commissariats concerned, to draw up guiding principles fixing the fundamental tendencies and the essential aims of the future collective agreements. The central trade union committees then conclude with the central administrative departments of the various branches of the industry general agreements defining the work assigned to each undertaking in the field of economy and production, the output of the undertaking, the average level of wages, the amount of the wage fund for each class of worker and the amount of money to be devoted to the building of dwellings, social and cultural measures, and the protection of labour. On the basis of the general agreement, the works council of each undertaking concludes a collective agreement with the management of the undertaking. The conclusion of the agreement is preceded by discussions organised among the workers of the various sections and workshops, concerning the new tasks assigned to the production services and the other clauses of the agreement.

In order to be sure that the workers as a whole take part in the discussion of the clauses of collective agreements, the trade unions make use of a number of methods such as the organisation of general conferences for factory workers, the study of the proposed agreement by meetings of workers and salaried employees arranged by sections or workshops, the presentation by the workers of proposals and observations bearing on the conditions of the new collective agreement, the discussion of rationalisation and production plans, and of the measures for the protection of labour, technical measures, safety measures, etc. Observations and proposals put forward by workers are discussed at workers' meetings and the results of such discussions have a definite influence on the final drafting of collective agreements.

In order to avoid undue uniformity in collective agreements and to make sure that the workers have as large a share as possible in the drafting of such agreements, the trade unions refrain from establishing standard contracts of employment.

The Labour Codes of the Federated Socialist Republics of the Soviet Union embody general provisions which declare null and void all clauses of collective agreements which prescribe conditions of work that fall short of the standards fixed by legislation. The

inclusion in the collective agreements of clauses making provision for conditions of work identical to those established by law would, moreover, be superfluous. The collective agreements therefore contain as a general rule only such clauses as ensure for workers advantages which are not laid down in existing labour legislation. The agreements do, however, regulate all conditions of labour which are not already covered by legislation ; in this case the rules laid down in the collective agreements have force of law, and infringements of rules thus established entail penal responsibilities for the employer.

The collective agreements of the various undertakings mention, in addition to the figures fixed by the State Economic Plan (relating to the number of workers, increase of output and wages, wage funds, amounts allocated for the protection of labour, technical safety, cultural and social measures, the construction of dwellings, etc.), the rates of wages, the system of remuneration of work, the measures actually to be taken with regard to labour protection and technical safety, social and cultural organisation, the construction of dwellings, and the vocational training of workers and salaried employees.

In addition to certain other details, collective agreements also determine the maximum and minimum wage rates on the basis of plans drawn up by the State organs in collaboration with the trade unions. The establishment of wage limits is made in the following manner :

The Council of People's Commissaries of the Union of Soviet Socialist Republics (Sovnarkom) establishes in accordance with information provided by the State Planning Commission (Gosplan) the general wage fund and the level of wages for the whole industrial system and for each People's Commissariat (Norkomat), with particular reference to the People's Commissariat for Heavy Industry, the People's Commissariat for Light Industry, the People's Commissariat for Railway Transport, the People's Commissariat for the Food and Drink Trades, etc. For certain key industries (coal, iron and steel, engineering, chemicals, transport) provision is made for higher wage rates.

The People's Commissariats, in turn, divide the amounts allocated to them between the central administrative departments (Glavkam) under their jurisdiction , the latter then make a final distribution between the individual undertakings, giving preferential treatment, here again, to undertakings of essential importance or playing a capital part in industrial affairs, and establishing the

wage funds for the various classes of workers employed in the undertakings : workers, salaried employees, engineers and technical workers, auxiliary staff and apprentices.

The trade unions take part in all stages of the establishment of the labour standards required by the State Economic Plan, and are thus in a position to bring their influence to bear on the fixing of wage rates for the various branches of industry and for each individual undertaking.

Under this system, the only function left to collective agreements in connection with wages is to fix the wage rates of the various classes of workers and salaried employees for each individual undertaking, keeping within the limits of the wage funds allotted to them.

For this purpose, the collective agreement fixes the wage payable for the least skilled work in each class (i e the lowest grade) and the normal relation between the wages paid for the various classes of skilled labour and the wage for the least skilled work.

In order to enable the worker's degree of skill to be defined, the State economic institutions, acting in conjunction with the trade unions, establish classification tables for skilled work, which show the various qualifications and standards required.

In establishing the respective wage rates for a given undertaking, the State economic institutions and the trade unions adhere strictly to the socialist principle of payment by quantity and quality ; the higher the worker's skill the higher the pay, while special favour is shown in establishing wage rates for the occupations and specialised trades which are most important for the industry in question and for occupations involving arduous or unhealthy work.

The use of different wage scales in different districts was fairly common in the past, at a time when the price of foodstuffs and other commodities varied greatly from one region to another. The difference in prices is considerably less nowadays although divergencies still exist, especially in remote parts of the country with a severe climate (islands in the Arctic Ocean, the Sakhalin Peninsula, Kamchatka, etc.). Under special provisions issued by the Government, moreover, wage rates of workers in the Far-Eastern territories of Russia, Eastern Siberia, and in the autonomous Socialist Republic of Yakutsk, are much higher relatively than those of workers in other parts of the Union.

In the Soviet Union, there are no differences of wages based on age, sex, race or nationality ; everyone is paid in accordance with

output and the quality of his work. Children and juveniles, however, receive full wages for a reduced working day throughout the whole period of their apprenticeship.

Workers who are partially incapacitated are transferred, on the advice of a medical board, to other employment entailing less arduous work. Disabled workers are covered by a social assistance scheme financed by the State.

As already stated, collective agreements aim at ensuring the payment of wages corresponding to the quantity and quality of the work.

The system of payment in the Union of Soviet Socialist Republics is based on piece rates. Wages are paid by the hour or by the day only when it is impossible to apply a piece rate system, such being the case for most classes of office employees.

In order to encourage the general adoption of piece rates, collective agreements generally provide higher scales (hourly or daily) for workers engaged on piece work than for those paid by the hour or day. The difference in the wages fixed by collective agreements for these two classes of workers varies from 20 to 25 per cent.

Collective agreements also fix different rates of remuneration for piece work carried out on the basis of technical output standards or on the basis of experimental or statistical standards. In view of the fact that technical standards are higher and therefore more difficult to exceed than experimental or statistical standards, the trade unions generally allow, in collective agreements, a higher rate of remuneration (15 to 20 per cent as a rule) for work carried out on the basis of the former.

Again, collective agreements establish for workers employed in arduous or unhealthy work higher wage rates (20 to 25 per cent. as a rule) than for workers employed in normal conditions.

The collective agreement further lays down the methods of establishing output standards and standard piece or job rates (keeping strictly in the latter case to the scales fixed for each class of worker), and regulates the procedure and the time-limits to be observed for the review of output standards. After revision, standards of output and remuneration remain in force for at least one year as a rule and cannot be altered during that period except when changes made in the technical processes or the adoption of rationalisation measures lead to a considerable increase in output.

In a certain number of particularly important branches of

industry, collective agreements make provision for progressive wages for piece or job work ; this system of payment, which provides further material encouragement to increase output, has proved to be extremely successful in Soviet undertakings and its use is becoming more and more widespread.

Collective agreements also make provision for various systems of bonuses which allow the worker's remuneration to be increased with the quality of his work. Bonus systems are introduced to encourage a reduction of wastage, a reduction in the cost of fuel and motive power, a reduction in the frequency of work stoppages, etc.

The fact that the basic laws of the Union of Soviet Socialist Republics regulate in satisfactory fashion the working hours of all classes of workers (hours are 6, 7 or 8 in the day) makes it unnecessary to mention the question of working hours in collective agreements. The basic laws also define the number of hours that may be worked at night, the hours of children and young persons, the length of the breaks to be granted to mothers nursing their children, etc., and therefore collective agreements generally make no mention of such matters.

As a general rule, recourse to overtime is forbidden. The law authorises overtime — up to a maximum of 120 hours a year per person — only in the following exceptional cases : (1) for the performance of work absolutely necessary for the protection of the Republic and the prevention of public disasters or dangers ; (2) for the performance of absolutely necessary work in connection with the water supply, lighting, drainage, communications, and the postal, telegraph and telephone services ; (3) to complete work the suspension of which would entail damage to materials or plant ; (4) to effect temporary repairs or adjustments of machines or apparatus, if their deterioration is likely to entail a cessation of work for a large number of workers.

The law prohibits the employment of children and juveniles under 18 years on overtime work.

Special authorisation must be obtained in each case from the factory inspectorate when it is proposed to work overtime. Collective agreements do not therefore fix the maximum amount of authorised overtime or the total amount of overtime allowed during a given period. The rates of remuneration for overtime or work performed on rest days or public holidays, and for night work, are regulated by the labour codes of the Federated Republics.

In the section devoted to the improvement of working con-

ditions from the standpoint of health, the collective agreement defines the obligations of the administration as to the adoption of health and sanitary measures likely to reduce the frequency of injury and sickness, and the necessary technical safety measures.

Provision is made in collective agreements for the organisation of classes in industrial safety for the workers. A large number of collective agreements also require new apprentices to be examined by a vocational selection committee and to undergo periodical medical examinations during apprenticeship. In many cases the managements agree to set up their own factory medical services.

The clauses referring to the measures to be taken with regard to housing facilities and the cultural and social arrangements to be made for the workers of the undertaking form an important part of the collective agreement. Such clauses must define the measures to be taken within the limits of the funds granted by the State and determine the use to be made of such funds to ensure a continuous improvement in the living and social conditions of all the workers of the undertaking in general and of each class of worker in particular.

The managements undertake in this connection to bear the cost of the building of dining rooms and the organisation of canteens, the construction of dwellings for workers and salaried employees, and to share the cost of establishing workers' clubs, sports grounds, nurseries, maternity schools, etc.

The management of the undertaking also agrees, in collective agreements, to organise vocational training of workers so as to allow the latter to become acquainted with the technical side of industry and to improve their knowledge of their trade. It further undertakes to provide specialised workers with opportunities for improving their scientific knowledge.

According to the definition given in Soviet legislation, a collective agreement is taken to mean an agreement concluded between a trade union as representative of the wage-earning and salaried employees on the one hand, and the management of an undertaking, institution or business concern on the other. As the law does not make the conclusion of collective agreements compulsory, the latter are in the nature of voluntary agreements.

The law provides for the conclusion of general collective agreements covering the whole of a given branch of industry or the whole national economic system, and local collective agreements limited to a single undertaking, institution or business concern, similar to those mentioned above. Collective agreements come

into operation on the date of their signature or at a date specified in the agreement.

Provisions in collective agreements which specify conditions of work less favourable than those in force under existing labour legislation are null and void. In order to allow a check to be kept on collective agreements and at the same time to give them force of law, the Labour Code requires all collective agreements to be registered by the organs of the People's Labour Commissariat; since the amalgamation of the People's Labour Commissariat with the Central Council of Trade Unions, registration formalities are carried out by the territorial or regional inter-trade union organisations, that is to say, by the Trade Union Councils. The organs responsible for registration are entitled to annul any part of a collective agreement which is in contradiction with the provisions of labour legislation, or which lays down less favourable conditions than those established by such legislation. Collective agreements which are not registered have no force of law.

If a dispute arises during the conclusion of a collective agreement, the parties to the dispute may by common consent appoint judges (and referees) to settle the matter. An arbitration board may be set up at the joint demand of the disputants, or, in the absence of agreement, by order of the referee. The parties have the same right to apply for arbitration in the case of disputes arising out of the interpretation of the clauses of a collective agreement already in operation.

In cases of dispute or disagreement with State undertakings or institutions, an arbitration court may be constituted at the demand of one of the parties (the administration of the undertaking or the trade union). In such cases, the award of the arbitration court is binding for both parties.

The law makes no provision for compulsory arbitration in the case of disputes concerning the revision or cancellation of clauses of a collective agreement prior to its date of expiry, unless both parties agree to submit the matter to arbitration.

In addition to collective agreements, provision is made by law for individual contracts of employment; these may be concluded, verbally or in writing, between a worker and the administration of an undertaking, whether a collective agreement exists or does not exist. Individual contracts of employment may not, however, establish less favourable conditions of work than those laid down by existing labour legislation or the collective agreements in force.

Contracts of employment may be concluded *(a)* for an indefinite period; *(b)* for a specified period not exceeding three years; *(c)* for the time required to carry out specified work.

The violation of the clauses of a collective agreement or an individual contract of employment or the failure by the parties to observe the obligations undertaken may, even under the Soviet system, lead to a dispute. The trade unions consider, however, that in view of the common interests of the working classes and the Soviet State, a strike in a State undertaking cannot be admitted as a method for the settlement of a dispute, and they endeavour in every case to find an amicable settlement.

For the settlement of disputes, assessment and disputes committees appointed on a basis of joint representation are set up in all undertakings and institutions. The awards of these bodies are made by agreement between both parties and are final. Decisions taken in contradiction with labour legislation and collective agreements may be cancelled by the factory inspectorate.

In default of agreement between the persons forming an assessment or disputes committee, disputes concerning the establishment of labour conditions may be referred to a conciliation board or arbitration court.

Workers employed in undertakings and institutions may bring a dispute before a special session of the People's Court without referring it to an assessment and disputes committee, provided the dispute does not concern a question which by law comes under the competence of a joint institution.

Deliberate infringements of the clauses of collective agreements may entail penal sanctions.

The law lays down certain time-limits within which disputes relating to working conditions must be brought before the competent authorities. Disputes about the dismissal of a worker, the termination of a contract by a worker on account of the non-payment of wages within the proper period, or unjustified conduct on the part of the administration of an undertaking must be notified within 14 days, and all other disputes within three months of their occurrence.

Attention must also be called to another important feature of collective agreements in the Union of Soviet Socialist Republics which affects all undertakings and institutions without exception. It is the fact that in Soviet Russia trade unions are organised by economic branch and not by trade, and that, consequently, there is only one collective agreement for each undertaking,

this agreement covering all wage-earning and salaried employees in the undertaking while defining conditions of labour and wage rates for each special class of worker.

Collective agreements in the Union of Soviet Socialist Republics also have the distinctive feature of being effective not only for members of the trade unions but also for workers who do not belong to the unions (membership of the unions is optional in Russia). The Soviet trade unions thus extend their protecting care to workers who are not members of a union. It does not follow, however, that trade unionists in Soviet Russia do not enjoy any special privileges as compared with non-unionists. On the contrary, under social insurance legislation, trade unionists receive higher benefits in case of temporary incapacity, incapacitated unionists are entitled to pensions under social insurance, while unionists requiring care and rest are sent at the cost of the unions to rest homes and sanatoria.

In the above summary of the legislation which, in the Soviet Union, governs collective agreements and the practice followed in their conclusion, an effort has been made to bring out the features which distinguish the Soviet State (a community of workers' and State interests with a planned organisation of all branches of national economy and an extensive labour legislation) and which by their influence on all aspects of economic life confer on collective agreements an importance which is unequalled in any other country. Collective agreements which establish bilateral obligations guarantee steady improvement in social and living conditions for the working masses as a whole and organise all grades of workers so that they carry out or even exceed the plans made for each individual undertaking and thus contribute to the betterment of the material, cultural and social standards of the Russian worker. It is just these characteristics that give them their wide economic and political significance in that country.

PART IV

COLLECTIVE AGREEMENTS AND INTERNATIONAL LABOUR CONVENTIONS

I. — Collective Agreements and the Ratification of International Labour Conventions

In earlier parts of this Report an increasingly close relationship has been shown to exist in many countries between collective agreements and national labour legislation. It has also been shown that certain countries have found it necessary in the organisation of their economic life to introduce, with the authority of the State, systems for the regulation of working conditions which are based upon collective bargaining or which possess some of the features of collective agreements. This interrelation between collective agreements and national legislation suggests that such agreements might also provide a useful basis both for the preparation and the ratification of international labour conventions.

In accordance with the Constitution of the International Labour Organisation, each State which ratified an International Labour Convention is responsible for securing its effective observance within its jurisdiction. Each State is entirely free to decide upon the methods it will adopt for securing the effective observance of a Convention, and the question may be raised whether, and under what conditions, the system of collective agreements could be utilised to a greater extent than at present to enforce the obligations resulting from ratification.

Provided proper observance were secured, would it be practicable for States in which collective agreements are well developed to base their application of certain Conventions on this system, while other States in which these agreements are less effective could use other methods ? If this procedure should prove possible, it would enable some countries, where certain conditions of work are normally regulated by collective agreements and not by legislation, to ratify Conventions, which otherwise they would be precluded from ratifying. Neither the Constitution of the International Labour Organisation nor the terms of particular Conventions require States to apply the same methods for securing observance.

In considering the possibility of using collective agreements as a basis for the ratification of Conventions reference may be made at the outset to two main points. The first is that in some countries the standards of working conditions which a convention is designed to establish for some industry or group of industries may be effectively applied by collective agreements. In such circumstances, the essential purpose of the Convention is in fact secured. The second point is that whereas a collective agreement, unless its authority has been extended by the State, represents a mutual obligation only between the parties to the agreement, the ratification of an International Labour Convention involves an obligation by the State to all other States which have ratified the Convention.

Is it possible for the State to assume responsibility for a collective agreement, using it as a basis for ratification, without destroying the freedom of relations between employers' organisations and trade unions and the adaptability to changing conditions which have been outstanding features of the system of collective agreements ? An affirmative answer to this question depends upon a further evolution of collective agreements, a development of the relation between collective agreements and State regulation of working conditions, and an adaptation of Draft Conventions to the system of collective agreements.

There seems no unsurmountable obstacle to these adjustments and adaptations. As indicated in previous parts of this Report, the necessary evolution has already begun and has indeed made considerable progress in several countries. Collective agreements in a number of countries are no longer localised and monopolistic contracts based upon craft associations, the State no longer limits its intervention in the regulation of labour standards to protection

against industrial accidents and disease and against a few other of the worst abuses of unregulated competition ; while the system of international draft conventions is still a very recent development. In a world of change the conscious continuous adaptation of systems and methods is necessary and there would seem to be many advantages in the mutual adjustment of draft conventions and collective agreements for the most effective national and international regulation of working conditions. Parties to an agreement might be willing to modify its provisions if this would lead to the application of similar standards in other countries by the ratification of an international labour convention.

II. — Conditions necessary to permit the System of Collective Agreements to be utilised as a Means of applying International Labour Conventions

The developments necessary to permit the system of collective agreements to be linked up with that of the application of international labour conventions will now be examined.

This procedure would only be practicable in those countries in which collective agreements are highly developed. A national agreement for an industry, or a series of separate district agreements which are, however, similar in their provisions and which together cover all parts of the country is the necessary basis. Few if any agreements apply to all undertakings and all workpeople in an industry or branch of industry, and, further, undertakings are usually free to withdraw from the association and so release themselves from the obligations of an agreement. Some agreements, however, apply to a very large proportion of an industry. In such cases it might be possible to extend the agreements by State authority to the minority not covered by the agreement. This method has been frequently adopted, it is often welcomed by the parties to the agreement, and it does not restrict their freedom in bargaining ; it does, however, interfere with the freedom of the minority. Where this method is in operation there would be no fundamental difficulty in ratifying an international labour convention, provided the standard fixed by the collective agreement is not below that of the convention. Other methods might perhaps also be found which would link conventions with collective agreements.

If collective agreements are to provide a basis for the ratification of international labour conventions, the scope and content of the agreements and conventions must correspond. As already indicated, collective agreements and also analogous systems of regulating working conditions are framed for separate industries, which ensures that the special conditions of an industry receive full consideration. On the other hand, until recently a large part of labour legislation has been of general application to workers in many industries. The scope of most international labour conventions has also been general. Thus the Washington Hours Convention, the Conventions on night work of women and young persons, on social insurance, weekly rest, minimum wage fixing machinery and other conventions apply to all industries, or to all branches of commerce. Certain conventions, however, apply to workers in particular industries or branches of industry ; for example, dockers, coal miners, automatic sheet-glass workers, and workers in glass-bottle manufacture ; the seamen's Conventions may also be included in this group. These correspond more closely in scope with collective agreements.

General regulations which apply to many different branches of production are of value in establishing basic standards for the whole or a large section of the community. Inevitably, however, these standards represent the least common denominator of conditions in the various sections of industry covered. Higher standards are applied in many branches and the general regulations may be of little or no practical significance for these branches. As already indicated, collective agreements are concluded for particular branches of industry, and if national legislation and international labour conventions are to supplement general standards by special standards they must deal with the problems industry by industry and secure the co-operation of the representatives of employers and workpeople within each industry. In this co-operation the collective agreements already established have a special value. In national legislation and also in the international field the importance of supplementing general standards by special standards is being increasingly recognised. This is illustrated by the procedure recently adopted by the International Labour Conference in dealing with the problem of the shorter working week. For the detailed application of the general principle a series of special conventions for particular industries was seen to be necessary.

If international labour conventions are to deal increasingly with special branches of industry, it will be necessary to develop machinery for consultation with representatives of employers' and workers' organisations in the industries concerned and to utilise the provisions of collective agreements in operation. Certain methods of consultation have already been established. Experts from particular industries are included in national delegations, while preparatory technical conferences on hours of work in coal mines and on maritime questions have been held. In addition, committees of experts in the textile industry, in iron and steel and in glass-manufacturing have met. It might be practicable to secure the adoption of methods, in part based upon international collective bargaining, although finally using the form of the draft convention for purposes of international obligation.

Until recently the questions regulated by collective agreements have differed somewhat from those regulated by national legislation and international conventions. Thus, social insurance has been of minor importance in most collective agreements but has been a prominent feature of national legislation and international labour conventions. On the other hand, rates of wages and methods of wage payment have been of outstanding importance in collective bargaining but, with a few notable exceptions, have been relatively neglected by the State. Regulation of hours of work is in an intermediate position, being included in most collective agreements and also being important in national legislation and in international labour conventions.

Although no arbitrary line of demarcation separates the subjects for which collective agreements are appropriate from those for which national legislation and international conventions are suited, there are certain questions for which the methods of collective agreement are particularly appropriate. If progress is to be made in the effective regulation of these questions nationally and internationally, there must be adaptation to the system found by experience in the negotiation and application of collective agreements to be workable. The chief of these questions is wages, but that of hours of work, including the regulation of overtime, is important, while various other subjects may be selected from the complete list reviewed in Part I of this Report. Certain of the subjects dealt with by collective agreements are, however, of only specialised or local interest.

Here the regulation of wages may be considered both because

of its importance and its difficulty.[1] It will illustrate the nature of the adjustments necessary if the system of collective bargaining is to be integrated or co-ordinated with national legislation and international conventions. Of all questions regulated by collective agreements, rates of wages are most frequently subject to revision. Even in periods of stability of currency values and of economic conditions, rates of wages are rarely fixed for longer periods than twelve months. If notice to terminate the agreement is not then given the provisions usually continue in force, but the essential point is that the parties are free to demand the consideration of revision. Therefore, even if the parties were willing to agree that the State might ratify an international labour convention on the basis of a collective agreement which they had concluded, the ratification could be effective only for the period covered by the agreement.

Hitherto, international labour conventions have been adopted with a view to their application for long periods, and in most of them the possibility of revision only once in ten years is envisaged. If, however, conventions are to deal not only with general standards suitable for long-term application but with the more specific standards of particular industries, and especially if the wage problem is ever to be dealt with in detail, a much shorter period for the validity of ratifications of certain conventions will be necessary, with, however, facilities for renewal from period to period if the conditions of the agreements remain in conformity with the provisions of the conventions. Without such a shortening of the period, States would either find it impossible to use collective agreements as a basis for ratification of conventions, or, by ratifying conventions for a longer period than those of the agreements, would interfere with the freedom of the parties to the agreements. Objection to such interference would be raised in many countries both by the employers' organisations and trade unions.

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[1] In the Reports on *Reduction of Hours of Work* submitted to the 19th Session of the International Labour Conference, reference is made to difficulties which would be encountered in the international regulation of wages. The Reports indicate that, in many cases, Governments are not in a position to undertake the regulation of wages, and that in most countries neither Governments, employers nor workers desire that the fixing of wages should become a Government responsibility. At the present time international exchanges are subject to continual fluctuations which might at any time destroy the basis of any agreement reached. Also, the levels of wages in any country, being affected by international competition, by internal economic conditions and changes in the cost of living, are subject to frequent readjustment, and the operation of international obligations on wage rates would entail a detailed and complicated intervention by the State in the determination of wages.

Already, the International Labour Conference has recognised the need for a shorter period than ten years for the validity of certain Conventions. Thus the Hours of Work (Coal Mines) Convention, 1931, provided for the consideration of revision on certain points within three years and for denunciation of ratifications after the expiration of five years. A still further shortening of the period of operation of conventions would be necessary if conventions are to deal with conditions in particular industries which may require regular and frequent adaptation to changes in economic conditions. An acceleration of the processes of ratification would also be necessary. A study of the progress of ratifications shows that a period of four or five years usually elapses before a convention adopted by the Conference is ratified by a substantial number of countries. If conventions are more and more to regulate standards of importance to particular industries in their international competition it will become necessary to evolve methods for rapid and also for simultaneous ratification.

Not all of the subjects regulated by collective agreements are liable to change so frequently as rates of wages. Although collective agreements are often subject to change each year, many of the provisions are renewed year after year. While rates of wages may be frequently changed, the provisions regulating methods of wage payment, hours of work, overtime, Sunday and holiday work, apprenticeship, discipline and many other questions may continue with little or no modification for several years. On such questions the employers' organisations and trade unions, in consultation with the Government, might be willing to sign agreements for three or five years, leaving rates of wages and other subjects which are liable to frequent change to be dealt with in separate agreements. This would in no way restrict the freedom of the parties to agreements but it might facilitate the ratification of conventions on certain subjects for periods of several years.

Complications would be avoided in the establishment of a liaison between collective agreements and international labour conventions if the conventions (which certain countries would doubtless be more ready to ratify if they could do so on the basis of collective agreements) dealt with only one subject or a few closely related subjects. Many collective agreements are long detailed documents covering a wide range of subjects which vary from industry to industry and from country to country. It would be impracticable to attempt to deal in one convention with the

whole or even a considerable part of the field often covered by a single collective agreement.

In addition to preparing conventions in such a way as to facilitate their ratification by countries in which collective agreements play an important part in the regulation of working conditions, the question may be considered whether there would be value in the adoption of Draft Conventions or Recommendations dealing with the scope, structure and content of collective agreements, and also with methods of conclusion and revision of agreements. It is recognised that one of the chief qualities of the system of collective agreements is flexibility and variety and no attempt should be made in the interest of greater uniformity to override differences based upon variety in the industrial conditions with which the agreements deal. But there are many variations in the form and method of agreements which have no real foundation or which are based upon real differences which no longer exist. It might be useful on the basis of experience in different industries and countries to reach certain conclusions upon the structure and methods which have given the best results. These might be embodied in a Recommendation which could be used by Governments in the processes of conciliation and arbitration and in any other relations which they may have with the adoption of collective agreements. Such indications would also be useful to employers' organisations and trade unions when engaged in remodelling the form of their agreements.

The question of the operation and enforcement of conventions on the basis of collective agreements may now be considered. Governments no doubt rely for enforcement mainly on an official inspectorate or on a system of State administration, for example, in the application of conventions on social insurance. The International Labour Conference has not, however, excluded methods in which the collaboration of organisations of employers and of workpeople is expressly provided for. The Placing of Seamen Convention, 1920, provides that the system of employment offices contemplated may be organised and maintained, either by representative associations of shipowners and seamen jointly under the control of a central authority, or, in the absence of such joint action, by the State itself. Article 2 of the Hours of Work (Industry) Convention, 1919, provides that employers' and workers' organisations may, by agreement, fix working hours on certain days of the week at more than eight but not more than nine hours, provided that the hours on other days are less than eight and that

the limit of forty-eight hours in the week is not exceeded. In the Sheet-Glass Works Convention, 1934, and the Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935, provision is made that, where additional hours are worked in certain special circumstances, adequate compensation shall be granted in such manner as may be determined by national laws or regulations or by agreement between the organisations of employers and workers concerned. The evidence available seems to show that in an industry in which employers and workers are strongly organised the standard of observance of agreements is high.

In some countries the Government is unwilling to intervene or considers it unnecessary to do so in the application of standards of working conditions in industries in which strong organisations of employers and of workers have been established. Also the organisations themselves often prefer to control the operation of agreements. In the application of conventions Governments would be free to decide, in consultation with the organisations concerned, whether effective observance of a convention can be secured by the organisations alone, or whether the measures taken by the organisations should be supplemented by State supervision. This might take the form of inspection specially directed to those undertakings and districts in which the organisations are weak. The recent British legislation already mentioned, which establishes methods for giving statutory authority to the rates of wages fixed by collective agreement in the manufacturing section of the cotton industry and for extending their application to all undertakings in this section, leaves the organisations free to secure enforcement without any direct intervention by the State. There are many other industries in Great Britain and in a number of other countries where effective observance of the provisions of agreements is ensured by the parties to the agreements alone.

In some countries the method of regulating working conditions by joint consultation and agreement between employers' organisations and trade unions has been effective for many years. It ensures adjustment of working conditions to the needs of each branch of industry by those who are best informed about the conditions. By methods of voluntary conciliation and arbitration or by giving statutory force to conditions approved by representatives of employers and workers in an industry the State can support the system and extend its usefulness. The question

is therefore being asked whether, as the system of collective agreements is capable of giving results comparable with those of legislation, means could not be found, perhaps along the lines indicated above, for States in which working conditions are extensively regulated by collective agreements to be able to make greater use of these instruments, possibly in conjunction with legislation, with a view to the ratification of international labour conventions.

CONCLUSIONS

The evidence brought together in this Report serves to show the increasing importance of the collective agreement as an element in the social and economic structure of the modern industrial community. The growth of the movement for regulating conditions of work by means of collective agreements has been particularly marked since the war, and in many countries the collective agreement is now a recognised method of determining working conditions. The movement is primarily based on the desire of employers and workers to settle for themselves the conditions in their industries, but it has proved to be not inconsistent with various forms of the co-operation, the regulation or the control of the State. Although the collective agreement has become widely established in a large number of countries as an integral part of the industrial system, it has discharged its important functions on the whole so smoothly and efficiently that the full extent of its influence on national life is often overlooked.

The present Report indicates, as a result of a careful analysis of the available facts, that collective agreements and analogous methods of regulating conditions of work constitute in many countries a highly co-ordinated system of agreed working arrangements affecting large numbers of workpeople and defining, often in great detail, almost every aspect of industrial relations.

On the basis of the detailed information contained in the Report, it would seem possible to draw certain general conclusions, which may be briefly summarised.

1. The questions actually regulated in the various countries by collective agreements, and these questions are very numerous, fall into two main classes, first, those relating to conditions of labour, such as wages, hours of work, conditions of engagement and dismissal, apprenticeship, insurance and so forth, and secondly, those dealing with the relations between the contracting parties,

whether in the particular undertaking or in the industry as a whole, for example, works regulations, disciplinary methods, penalties, and the settlement of individual labour disputes, and the prevention and settlement of collective disputes arising out of the application, interpretation or renewal of collective agreements.

In practice, the Report indicates, two of these many questions are of particular importance from the standpoint of regulation by collective agreement.

(a) The first is wages. Collective agreements have always been and still are primarily wage agreements. This is because the question of wages has for obvious economic reasons been generally considered unsuitable for uniform and general regulation by law. The level of wages in each country and in each industry is determined both by considerations of international competition and by all the influences affecting the domestic market and the cost of living. Wage rates everywhere are subject to constant readjustment. Wages, which constitute the essential element in the determination of the standard of living of the workers, remain, with relatively few exceptions, outside the field of legislative action and are settled by agreement between the parties. It is thus natural that no other question should have played so important a part in relations between employers and workers and should have been dealt with in so much detail by collective agreements.

(b) The second question is hours of work. Although hours of work are often regulated by legislation, collective agreements also play an extremely important role in this field. In some countries they take the place of legislation ; in others they supplement legislation, by regulating matters of detail not dealt with by legislation, by fixing higher standards than those laid down in the basic legislative codes, or by applying to particular industries or branches of industry the general principles established by legislation.

2. After indicating the importance, in actual practice, of collective agreements, the Report passes in review the development of national legislation on collective agreements. It shows that, apart from the few countries where collective agreements have evolved without any sort of regulation, legislation on collective agreements has exercised a considerable influence on practical developments. Although the various legal measures which exist

are of the most diverse character, ranging from mere indirect regulation to the total and systematic organisation of labour and economic relations, the Report leads to the conclusion that there are two questions of fundamental importance on which a considerable measure of agreement exists.

(a) Legal recognition is accorded to collective agreements in a considerable number of countries.

The effect of legal recognition is that the conditions of employment laid down in collective agreements necessarily or automatically form part of any individual contracts of employment subsequently concluded between employers and workers belonging to the contracting organisations. As they have binding effect, no departure from these conditions is permitted except in the interest of the workers.

It should be noted that the legal confirmation of collective agreements does not interfere in any way with the freedom of action of the parties concerned, for they may or may not conclude collective agreements and they may determine their substance and duration as they desire.

(b) Legal provision is made, also in a considerable number of countries, for the possibility of the extension of collective agreements to third parties within the limits of their scope.

Legislation providing for the possible extension of collective agreements to third parties serves the same purpose as legal recognition in that it merely supports the efforts made by the parties to make their agreements as wide in scope and as stable in character as possible. Whatever method the legislation prescribes — optional extension at the express request of the parties concerned or automatic extension in accordance with the law — the sole purpose is to extend to all persons, employers or employed, in the undertakings, occupations or industries covered by the collective agreement those minimum conditions that were freely agreed upon by the parties.

3. The Report then goes on to examine the place of collective agreements in the economic structure of the community. It draws attention to the tendency in the modern industrial community towards greater standardisation of working conditions, especially within each industry. This provides an economic basis facilitating the collective regulation of working conditions whether by voluntary agreements or by State action. Illustrations are then given of recent State intervention in the normal regulation of working

conditions in order, by rapid and uniform measures extending over a wide industrial field, to bring these conditions into proper adjustment with other factors of the national economic life. The review of such emergency measures is followed by an account of more permanent measures taken by certain States to incorporate collective agreements in the national economic structure.

This survey of the increasing significance of the role assigned to the collective agreement in the economic organisation of the modern industrial community leads to the conclusion that the recognition that the collective agreement is of importance not only from the point of view of industrial relations, but also in connection with economic developments, is a particular aspect of the growing consciousness of the interrelation of the social and the economic to which in the last few years the International Labour Conference has devoted much attention.

4. There remains one question with regard to collective agreements which is of obvious importance to the International Labour Organisation : how and to what extent can collective agreements be utilised in relation to International Labour Conventions ?

Some of the Conventions already adopted, such as the Hours of Work (Industry) Convention (1919), assimilate collective agreements to legislation for the purpose of the application of certain clauses of the Convention. It has thus been recognised that in certain respects collective agreements are an effective means of securing the enforcement of regulations in those countries and industries where the employers' and workers' organisations have attained a degree of development and stability sufficient to allow such a function to be entrusted to them.

If, as seems likely, collective agreements are destined to play an increasingly important part in the future, and if industrial self-government is to be still more firmly established, it is clear that the State will allow the collective agreement to play an increasingly large part in the regulation of conditions of work. Such a development could not fail to have important consequences for the establishment and enforcement of international labour legislation.

The various problems that would arise in this connection are carefully examined in the Report, and various tentative suggestions are made with a view to indicating some of the important questions to which the International Labour Conference may wish to devote

some discussion. In particular, the question is asked whether means could not be found for States in which working conditions are extensively regulated by collective agreement to be able to make greater use of these instruments, possibly in conjunction with legislation, with a view to the ratification of international labour conventions.

APPENDICES

APPENDIX I

REPORT OF THE COMMITTEE ON COLLECTIVE AGREEMENTS IN AGRICULTURE, SUBMITTED TO THE INTERNATIONAL LABOUR CONFERENCE AT ITS SEVENTEENTH SESSION

The Committee which was instructed to examine the Report of the International Labour Office on collective agreements in agriculture, submitted to the International Labour Conference in fulfilment of Resolutions adopted at the Eleventh and Sixteenth Sessions, was constituted by the Conference on 15 June 1933 and held two sittings, on 15 and 19 June 1933. The Committee was composed of 18 members, namely, 6 Government members, 6 Employers' members and 6 Workers' members.

The Committee elected Mr. Kolář, Government Delegate of Czechoslovakia, as Chairman and Reporter.

The Committee, the duties of which were limited to an examination and report to the Conference on the Report mentioned, did not have to formulate definite proposals.

The Committee noted the general accuracy of the description of the facts concerning collective agreements in agriculture given in the Report. At the same time, attention was drawn to the fact that the " Conclusions " of the Report took account almost exclusively of the importance of those collective agreements which result from a free bargaining between organisations of employers and workers or of agreements or guiding principles serving as a basis for individual contracts drawn up under the auspices or with the assistance of public authorities, but that they did not sufficiently note other forms of collective regulation where State action or State initiative played a large part and which in certain circumstances can be considered at least as efficacious. Thus, it was pointed out that, in countries where attempts to introduce collective bargaining in agriculture have failed, systems of regulating wages by minimum wages committees instituted by law have produced fairly satisfactory results ; it was also argued that the corporative system has successfully surmounted various defects in collective bargaining systems which the Report had noted, such as the fact that unorganised employers can escape the obligations contained in collective agreements and that it is difficult to extend the scope of these agreements to employers and workers other than those in large undertakings.

All speakers agreed that the collective regulation of labour condi-

tions offers advantages to agricultural workers. But the importance to be attributed to such a method of regulating these conditions varies according to the situation in each country. In no case does collective bargaining by itself provide sufficient protection for agricultural labour. While in a certain number of countries questions of wages, hours, and annual holidays can be adequately settled by this method, other questions, such as social insurance problems or the protection of women and children, can be properly dealt with only by means of legislation, at least in most cases.

In conformity with the different opinions expressed in the Committee as to the relative value to agricultural workers of the method of collective bargaining, several suggestions for the future treatment of this question by the International Labour Organisation were put forward by the Workers' members of the Committee. A proposal was made to invite the Conference to draw the attention of Governments to the Report of the International Labour Office and to suggest to them that they should take the necessary steps to encourage the method of collective bargaining in agriculture and to remove the difficulties which the introduction of this method at present encounters, or at least to invite the Governing Body to examine the possibility of putting this item on the Agenda of a future Session of the Conference with a view to the adoption of an international Convention or Recommendation.

Other proposals emphasised special aspects of the problem of the collective regulation of agricultural labour conditions and stressed the need either for investing the terms of collective agreements with legal force for the purpose of affording sufficient protection to agricultural workers, or else for adopting a minimum wage legislation in agriculture as the basis of a collective regulation of labour conditions.

The Committee ventures to suggest that the Conference should forward its report to the Governing Body of the International Labour Office for consideration by its Agricultural Committee, account being taken of all the observations made in the Committee and of all the suggestions set forth in its report.

Geneva, 19 June 1933.

(Signed) : Dr. Rudolf KOLAŘ,

Chairman and Reporter.

APPENDIX II

STATISTICS CONCERNING COLLECTIVE AGREEMENTS

Tables I and II give *statistics concerning collective agreements* between employers' and workers' organisations for the period 1927-1934 in 10 countries. The first table relates to statistics of collective agreements in force on a given date in each year and shows the number of agreements and the number of workers covered by them, and where possible the number of establishments covered. The second table gives statistics concerning agreements concluded, renewed or modified during each year, and classified into number of agreements, number of workers and number of establishments covered. Despite the importance of collective negotiations in the field of industrial relations, only a few countries compile statistics of this kind.[1] The meaning of the term " collective agreement ", however, is not always the same, and the definition may be based on the establishment as a technical unit, an economic unit or a geographical unit. The number of persons covered is sometimes taken to be the number of members of the trade unions party to the agreement, and sometimes the number of workers to whom the provisions of the agreement apply, either in law or at least in actual fact.[2]

[1] For a general analysis of the methods of compiling statistics of collective agreements, cf. INTERNATIONAL LABOUR OFFICE : *Methods of Compiling Statistics of Collective Agreements*, Studies and Reports, Series N, No. 11 (Geneva, 1926).

[2] These statistics are reprinted from the *I.L.O. Year-Book, 1934-35*. For notes on sources and methods, see that publication, pp. 245-247.

TABLE I. — COLLECTIVE AGREEMENTS IN FORCE

Year	GERMANY			AUSTRIA		
	Agreements in force on 1 Jan	Establishments covered	Workers covered	Agreements in force at end of year	Establishments covered	Workers covered
1927	7,490	807,300	10,970,120	2,737	147,596	1,007,723
1928	8,178	912,006	12,267,440	2,976	163,594	989,884
1929	8,925	997,977	12,276,060	2,791	192,546	957,940
1930	*	*	*	2,259	219,246	824,568
1931 [1]	*	804,788 [2]	12,006,255	1,989	196,206	639,841
1932	—	—	—	1,552	188,312	514,105
1933	—	—	—	1,660	174,067	489,480
1934	—	—	—	*	*	*

[1] For Germany, new series. — [2] This figure relates to establishments covered by manual workers' agreements only; the number of establishments covered by salaried employees' agreements was 266,209

Year	AUSTRALIA	NORWAY		RUMANIA	
	Agreements in force at end of year	Agreements in force at end of year	Workers covered	Agreements in force during the year	Workers covered
1927	744	846	122,536	281	87,793
1928	777	1,017	122,756	220	73,316
1929	605	1,501	141,535	293	94,950
1930	601	1 629	159,651	287	95,876
1931	614	1,522	162,184	292	84.252
1932	625	1,923	169,177	—	—
1933	653	2,418	177,965	—	—
1934	—	2,534	203,502	—	—

Year	NETHERLANDS			SWEDEN		
	Agreements in force on 1 June	Establishments covered	Workers covered	Agreements in force at end of year	Employers covered	Workers covered
1927	894	16,976	267,791	2,960	16,502	494,625
1928	1,016	17,209	279,597	3,326	17,388	512,542
1929	1,254	18,548	291,738	3,916	19,316	541,403
1930	1,546	23,528	385,783	4,422	20,185	580,931
1931	1,496	23,427	358,972	5,288	23,819	618,034
1932	1,325	21,720	251,715	5,806	24,630	636,138
1933	1,221	23,241	243,821	5,635	22,782	596,563
1934	1,132	25,431	258,185	6,288	25,864	674,700

TABLE II. — COLLECTIVE AGREEMENTS CONCLUDED, RENEWED OR MODIFIED

Year	GERMANY			AUSTRALIA	AUSTRIA		
	Agreements concluded or renewed	Establishments covered	Workers covered	Agreements notified	Agreements	Establishments covered	Workers covered
1927 . .	3,284	410,538	7,395,737	137	599 [1]	53,620 [1]	327,014 [1]
1928 .	3,377	470,384	5,376,009	128	925 [2]	139,480 [2]	451,346 [2]
1929 . .	*	*	*	109	813 [2]	42,033 [2]	373,609 [2]
1930 .	*	*	*	110	572 [2]	102,597 [2]	276,240 [2]
1931	*	*	*	112	468 [2]	20,922 [2]	186,602 [2]
1932	*	*	*	53	551 [2]	40,712 [2]	186,152 [2]
1933 .	*	*	*	64	611 [2]	50,711 [2]	228,977 [2]
1934	*	*	*	66	—	—	—

[1] Agreements concluded, not including renewals — [2] Agreements concluded, including renewals.

Year	FRANCE	ITALY		LATVIA	NETHERLANDS		
	Agreements concluded	National and interprovincial agreements notified	Provincial agreements concluded	Agreements concluded	Agreements concluded [1]	Establishments covered	Workers covered
1927 .	102	*	*	4	*	*	*
1928 . .	99	107 [1]	1,744	40	512	8,266	74,272
1929 .	112	71	1,156	17	344	9,979	185,496
1930 .	72	103	1,535	32	1,034	16,691	283,748
1931	17 †	119	1,484	1	295	9,903	137,319
1932 .	23 †	166	1,517	27	471	6,428	63,336
1933	17 †	91	1,538 †	—	398	9,103	47,623
1934 . .	24 †	215	1,499 †	—	434	16,245	124,701

[1] Agreements notified since 6 May 1928 — [2] Year between 2 June of the preceding year and 1 June of the year indicated

Year	POLAND		RUMANIA		SWEDEN		
	Agreements concluded	Workers covered	Agreements concluded	Workers covered	Agreements concluded	Employers covered	Workers covered
1927	523	296,882	148	41,505	607	4,355	94,176
1928	565	337,672	135	46,956	868	3,613	133,922
1929 .	336	120,252	218	76,495	990	4,322	112,541
1930 .	160	41,502	174	46,461	1,476	7,084	169,763
1931 . .	189	117,090	177	50,670	1,405	4,555	126,408
1932 .	197	215,077	101	25,296	1,588	4,787	257,905
1933	240	227,711	80	23,693	1,445	10,769	198,000
1934 .	—	—	92	24,154	1,500	8,540	139,641

APPENDIX III

LIST OF LAWS CONCERNING COLLECTIVE AGREEMENTS

ARGENTINA

Act No. 2426 to issue regulations governing employment. Dated 2 January 1935.

(L.S.[1], 1935, Arg. 1.)

AUSTRALIA

Commonwealth

Commonwealth Conciliation and Arbitration Act 1904-1928 (consolidated text).

(L.S., 1928, Austral. 2.)

Amendment.

(L.S., 1930, Austral. 11.)

New South Wales

Industrial Arbitration Act, 1912-1926 (consolidated text).

(L.S., 1926, Austral. 7.)

Subsequent amendments.

(L.S., 1927, Austral. 2 and 7.)
(L.S., 1929, Austral. 5.)
(L.S., 1930, Austral. 2, 3 (B) and 12.)
(L.S., 1931, Austral. 13.)
(L.S., 1932, Austral. 5.)
(L.S., 1935, Austral. 4.)

Queensland

Industrial Arbitration Act of 1916; amended by Act of 1923 (consolidated text).

(L.S., 1923, Austral. 1.)

Subsequent amendments.

(L.S., 1924, Austral. 2.)
(L.S., 1925, Austral. 4 and 6.)
(L.S., 1926, Austral. 9.)

Industrial Conciliation and Arbitration Act of 1929. Assented to 23 December 1929.

(L.S., 1929, Austral. 6.)

Amendments.

(L.S., 1930, Austral. 9.)
(L.S., 1932, Austral. 1.)

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[1] INTERNATIONAL LABOUR OFFICE, Geneva: *Legislative Series.*

An Act to provide for the encouragement of employment and the rehabilitation of industry ; to constitute and establish a Bureau of Industry; and for other purposes. Assented to 15 December 1932.

(L.S., 1932, Austral. 7.)

Industrial Conciliation and Arbitration Act of 1932. Assented to 6 January 1933.

(L.S., 1933, Austral. 1.)

Amendment.

(L.S., 1934, Austral. 5.)

An Act No. 3 to amend the Industrial Conciliation and Arbitration Acts, 1932 to 1934, in certain particulars. Assented to 17 October 1935.

(L.S., 1935, Austral. 7.)

South Australia

Industrial Acts, 1920-1925.

(L.S., 1925, Austral. 1.)

Tasmania

An Act to consolidate and amend the law relating to Wages Boards, and for other purposes. Dated 24 December 1920 An Act to amend the Wages Boards Act of 1920. Dated 13 March 1924.

(L.S., 1924, Austral 1 and Appendix.)

Subsequent amendments.

(L.S., 1929, Austral. 1.)
(L.S., 1934, Austral. 3.)
(L.S., 1935, Austral. A.)

Victoria

An Act to consolidate the law relating to the supervision and regulation of factories and shops and to other industrial matters. Assented to 12 February 1929.

(L.S., 1929, Austral. 13.)

Western Australia

Industrial Arbitration Act, 1912-1925 (consolidated text).

(L.S., 1925. Austral. 12.)

Amendment.

(L.S., 1930, Austral. 7.)

AUSTRIA

Act respecting the Establishment of Conciliation Boards and respecting collective agreements. Dated 18 December 1919.

(L.S., 1920, Aus. 22.)

Federal Act respecting the right to work and the right of assembly. Dated 5 April 1930.

(L.S., 1930, Aus. 1.)

Order of the Federal Government respecting the regulation of collective employment relations for public constructional works. Dated 13 June 1933.

(L.S., 1933, Aus. 7 [B].)

Order No. 132 to establish the Trade Union Federation of Austrian Wage-Earning and Salaried Employees. Dated 2 March 1934.

(L.S., 1934, Aus. 3.)

Act respecting the establishment of works councils. Dated 12 July 1934.
(L.S., 1934, Aus. 7.)

Act No. 290 *respecting the establishment of the Federation of Austrian Manufacturers.* Dated 17 October 1934.
(L.S., 1934, Aus. 12.)

Act to amend the Act of 12 July 1934 respecting the establishment of works councils. Dated 11 July 1935.
(L.S., 1935, Aus. 3.)

BRAZIL

Decree No. 21761, to institute collective agreements. Dated 23 August 1932.
(L.S., 1932, Braz. 6.)

Legislative Decree on collective agreements. Dated 22 September 1936.
(*Drjaven Vestnik*, 22 Sept. 1936.)

CANADA

Alberta

The Industrial Standards Act, 1935.
(*The Labour Gazette of Canada*, June 1935.)

Quebec

Act respecting the extension of collective labour agreements. Assented to 20 April 1934.
(L.S., 1934, Can. 5.)

An Act to amend the Act respecting the extension of collective labour agreements. Assented to 18 May 1935.
(L.S., 1935, Can. 6.)

Ontario

An Act respecting industrial standards. Assented to 18 April 1935.
(L.S., 1935, Can. 3.)

CHILE

Legislative Decree No. 178 to ratify the Labour Code (consolidating the Acts relating to labour). Dated 13 May 1931.
(L.S., 1931, Chile 1.)

Act No. 5405, to amend Legislative Decree No. 178 of 13 May 1931, which consolidated the Acts relating to labour. Dated 8 February 1934.
(L.S., 1934, Chile 1.)

The Collective Agreement Act. Dated 28 October 1930. Date of Enforcement 1 November 1932.
(*Chinese Labour Laws*, p. 23.)

Legislative Decree No. 446 respecting contracts of employment. Dated 24 August 1934.
(L.S., 1934, Cuba 7 [A].)

CZECHOSLOVAKIA

Order No. 102 for the temporary regulation of the conditions of employment of workers in the textile industry. *Dated 29 April 1935.*

(L.S., 1935, Cz. A.)

Order respecting the extension of collective agreements. Dated 20 February 1936.

(L.S., 1936, C. 2.)

DENMARK

Act No. 17 to prolong (until 1 February 1934) the operation of agreements between employers and employees and to prohibit stoppages of work. Dated 31 January 1933.

(L.S., 1933, Den. 1.)

Act No. 5 respecting intervention in labour disputes. Dated 18 January 1934.

(L.S., 1934, Den. 1.)

Act respecting the settlement of the dispute between the Danish Employers' Association and the Danish Federation of Trade Unions, the Danish Employers' Association and organisations outside the Danish Federation of Trade Unions, and other organisations of employers and employees. Dated 29 March 1936.

(Will be published in the *Legislative Series 1936.*)

ESTONIA

Act respecting collective contracts. Dated 26 March 1929.

(L.S., 1929, Est. 4.)

FINLAND

Act respecting collective contracts. Dated 22 March 1924.

(L.S., 1924, Fin. 2.)

FRANCE

Act of 25 March 1919 ; Act of 25 June 1919 respecting collective agreements. Cf. Chapter IV *bis*, Art. 31 to 31 *x*, and 32 of the Labour Code.

(L.S., 1919, Fr. 1.)

Act of 24 June 1936 respecting collective agreements. (Cf. Book I, Part II, Chap. IV *bis*, Division IV *bis*, secs. 31 v *(a)* to 31 v *(g)*.

(L.S., 1936, Fr. 7.)

GERMANY

Order relating to collective contracts. Dated 23 December 1918.

(L.S., 1923, Ger. 2.)

Act to amend the Collective Contracts Order. Dated 28 February 1928.

(L.S., 1928, Ger. 2.)

Act for the organisation of national labour. Dated 20 January 1934.

(L.S., 1934, Ger. 1.)

GREAT BRITAIN

An Act to make temporary provision for enabling statutory effect to be given to rates of wages agreed between representative organisations in the cotton manufacturing industry ; and for purposes connected with the matter aforesaid. Dated 28 June 1934.

(L.S., 1934, G.B. 7.)

GREECE

Act respecting collective contracts of employment. Dated 16 November 1935.

(L.S., 1935, Gr. 7.)

Act of 16 November 1935 respecting the settlement of collective labour disputes.

(L.S., 1935, Gr. 10.)

HUNGARY

Order No. 52000/1935 of the Minister of Commerce respecting the establishment and operation of the Wage Boards competent to fix minimum wages for certain trades. Dated 30 July 1935.

(L S., 1935, Hung. 6.)

INDIA

The Bombay Trade Disputes Conciliation Act, 1934. Assented to 27 August 1934.

(L.S., 1934, Ind. 4.)

IRISH FREE STATE

Act on Conditions of Employment. Dated 14 February 1936.

(L.S., 1936, I.F.S. 1.)

ITALY

Act No. 563 : legal regulation of collective relations in connection with employment. Dated 3 April 1926.

(L.S., 1926, It. 2.)

Royal Decree No. 1130, issuing rules for the administration of Act No. 563 of 3 April 1926, respecting the legal regulation of collective relations in connection with employment. Dated 1 July 1926.

(L.S., 1926, It. 5.)

Labour Charter. Dated 21 April 1927.

(L.S., 1927, It. 3.)

Royal Decree No. 1251, to issue rules for the filing and publication of collective contracts of employment. Dated 6 May 1928.

(L.S., 1928, It. 3.)

Royal Decree No. 200, to amend items *(a)* and *(b)* of Section 41 of Royal Decree No. 1130 of 1 July 1926, issuing rules for the administration of the Act respecting the legal regulation of collective relations in connection with employment. Dated 15 January 1931.

(L.S., 1931, It 1.)

Act No. 437, to extend the legal regulation of collective relations in connection with employment to share contracts in agriculture and for smallholdings. Dated 3 April 1933.

(L.S., 1933, It. 7.)

Act No. 163, respecting the constitution and functions of the corporations. Dated 5 February 1934.
(L.S., 1934, It. 1.)

Royal Legislative Decree No. 441 respecting the powers of the Central Corporative Committee. Dated 18 April 1935.
(L.S., 1935, It. 5.)

LATVIA

Order respecting collective labour agreements. Dated 4 October 1927.
(L.S., 1927, Lat. 3.)

LUXEMBURG

Order for the establishment of a National Labour Council. Dated 23 January 1936.
(L.S., 1936, Lux. 1.)

MEXICO, UNITED STATES OF

Federal Labour Act. Dated 18 August 1931.
(L.S., 1931, Mex. 1.)

Decree to amend various sections of the Federal Labour Act. Dated 19 January 1934.
(L.S., 1934, Mex. 1 [B].)

NETHERLANDS

Act to issue detailed regulations respecting collective agreements. Dated 24 December 1927.
(L.S., 1927, Neth. 2.)

Act to set up industrial councils. Dated 7 April 1933.
(L.S., 1933, Neth. 1.)

NEW ZEALAND

An Act to consolidate certain enactments of the General Assembly relating to the settlement of industrial disputes by conciliation and arbitration. Dated 1 October 1925.
(L.S., 1925, N.Z. 1.)

Industrial Conciliation and Arbitration Amendment Act, 1932. Assented to 27 April 1932.
(L.S., 1932, N.Z. 1.)

Act to amend the Industrial Conciliation and Arbitration Act, 1925. No. 6 of 1936. Dated 8 June 1936.
(L.S., 1936, N.Z. 1.)

NORWAY

Act respecting labour disputes. Dated 5 May 1927 (Sections 3, 4, 5 and 6, subsections 1, 2 and 40, relate to collective agreements).
(L.S., 1927, Nor. 1.)

Act to amend the Act of 5 May 1927 respecting industrial disputes. Dated 26 June 1934.
(L.S., 1934, Nor. 1.)

Act to amend the Act respecting labour disputes. Dated 29 March 1935.
(L.S., 1935, Nor. 1.)

POLAND

Order of the President of the Republic : Code of Obligations. Dated 27 October 1933.

(L.S., 1933, Pol. 6.)

PORTUGAL

Legislative Decree No. 23048, to promulgate the National Labour Statute. Dated 23 September 1933.

(L.S., 1933, Port. 5.)

Legislative Decree No. 25701, to authorise the Under-Secretary of State for Corporations to fix minimum wage rates wherever it is observed that there is a regular decline in wages in consequence of unrestricted competition in any branch of commerce or industry and that the said wages are falling below a reasonable rate. Dated 1 August 1935.

(L.S., 1935, Port. 5.)

RUMANIA

Act respecting contracts of employment. Dated 28 March 1929. Regulations for the administration of the Act respecting contracts of employment. Dated 31 December 1929. (Part IV A and B relate to collective contracts.)

(L.S., 1929, Rum. 2 [A] and [B].)

Act to amend certain sections of the Act respecting contracts of employment. Dated 10 October 1932.

(L.S., 1932, Rum. 3.)

SOUTH AFRICA, UNION OF

Act to make provision for the prevention and settlement of disputes between employers and employees by conciliation ; for the registration and regulation of trade unions and private registry offices and for other incidental purposes. No. 11 of 1924. Assented to 26 March 1924.

(L.S., 1924, S.A. 1.)

Act to amend the Industrial Conciliation Act, 1924. Assented to 28 May 1930.

(L.S., 1930, S.A. 5.)

Act to amend further the Industrial Conciliation Act, 1924. Assented to 7 March 1933.

(L.S., 1933, S A. 1)

Act to amplify the powers of the Wage Board and of the Minister..... in regard to the fixing of minimum remuneration for piece work, and to validate and amplify certain wage determinations made under the Wage Act, 1925. No. 16 of 1935. Gazetted 10 April 1935.

(L.S , 1935, S.A. 1.)

SPAIN

Act respecting contracts of employment. Dated 21 November 1931.

(L.S., 1931, Sp. 14.)

Act respecting joint boards for industrial and rural labour, rural property and agricultural production and industries. Dated 27 November 1931.

(L.S., 1931, Sp. 15.)

Decree to consolidate the law relating to joint boards. Dated 29 August 1935.

(L.S., 1935, Sp. 3.)

Act of 30 May 1936 to repeal the Act of 16 July 1935 and to enforce anew the Act of 27 November 1931.

(Will be published in the *Legislative Series 1936.*)

SWEDEN

Act respecting collective contracts. Dated 22 June 1928.

(L.S., 1928, Swe. 2.)

Act respecting the Labour Court. Dated 22 June 1928.

(L.S., 1928, Swe. 3.)

Act to supplement Act No. 245 of 28 May 1920 respecting conciliation in industrial disputes. Dated 28 June 1935.

(L.S., 1920, Swe. 6-8.)
(L.S., 1935, Swe. 4.)

SWITZERLAND

Federal Code of Obligations Art 321-323

TURKEY

Labour Act, No. 3008. Dated 8 June 1936.

(L.S., 1936, Tur. 2.)

UNITED STATES OF AMERICA

An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes. Approved 16 June 1933.

(L.S., 1933, U.S.A. 2.)

An Act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes. Approved 5 July 1935.

(L.S., 1935, U.S.A. 1.)

U.S.S.R.

Order of the A.R.C.E.C. respecting the bringing into operation of the Labour Code of the R.F.S.S.R. (1922 edition). Dated 9 November 1922.

(L.S., 1922, Russ. 1.)

Regulations and Orders: Collective Contracts. Dated 2 February, 19 February, 14 June, 17 October and 14 November 1923.

(L.S., 1923, Russ. 7.)

Order of the Council of Labour and Defence of the Union of Soviet Socialist Republics concerning the conclusion of collective contracts and the settlement of disputes in the principal industrial undertakings. Dated 6 June 1924.

(L.S., 1924, Russ. 8.)

Order of the All-Russian Central Executive Committee and the Council of People's Commissaries of the Russian Socialist Federative Soviet Republic, to amend Section 101 of the Civil Code, Section 266 of the Civil Procedure Code, and Section 93 of the Labour Code. Dated 11 August 1924.

(L.S., 1924, Russ. 5.)

Order of the Council of Labour and Defence respecting the procedure for the conclusion of collective contracts by State industrial undertakings of importance to the whole Union, and the settlement of disputes arising in connection with the conclusion and carrying out of the said contracts. Dated 8 December 1926.

(L.S., 1926, Russ. 8.)

Order No. 108 of the People's Labour Commissariat of the Union of Soviet Socialist Republics, respecting the procedure for the registration of collective contracts. Dated 18 February 1928.

Regulations No. 419 approved by the People's Labour Commissariat of the U.S.S.R., respecting the conditions of employment of congress stenographers. Dated 21 July 1928.

(L.S., 1928, Russ. 12 [A] and [B].)

Order No. 129 of the People's Labour Commissariat of the U.S.S.R., respecting the compulsory registration of general agreements and liability for delay in the registration of collective agreements. Dated 10 July 1932.

(L.S., 1932, Russ. 4.)

VENEZUELA

Labour Law, of 16 July 1936. (Part II, Chap. III, secs. 32 to 37).

(L.S., 1936, Ven. 2.)

YUGOSLAVIA

Industrial Act. Dated 5 November 1931.

(L.S., 1931, Yug. 4.)

यह पुस्तक निम्नांकित तारीख तक वापिस करनी है ।

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